

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (Suspended Goods) Repeal Determination 2025

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.

Under subsection 182(1) of the Act, the Director of Biosecurity may, by legislative instrument, determine that specified goods, or a specified class of goods (including conditionally non-prohibited goods), must not be brought into Australian territory for a specified period that is no longer than 6 months.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. As such, the Director of Biosecurity has the power to repeal a determination made under subsection 182(1) of the Act.

Purpose

The purpose of the *Biosecurity (Suspended Goods) Repeal Determination 2025* (the Repeal Determination) is to repeal the following determinations made under subsection 182(1) of the Act because the periods of suspension specified in the determinations, or to which the amendments in the determinations relate, have ended:

- *Biosecurity (Suspended Goods—Cats and Dogs Malaysia) Determination 2020* (the Cats and Dogs Determination);
- *Biosecurity (Suspended Goods – Uncooked Prawns) Determination 2017* (the Uncooked Prawns Determination);
- *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination 2017*;
- *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 2) 2017*;
- *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 3) 2017*;
- *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 4) 2017*.

Background

The Cats and Dogs Determination commenced on 12 March 2020 and specified cats and dogs considered as companion or assistance animals imported from Malaysia to Australia as a class of goods that must not be brought or imported into Australian territory (subject to some exceptions) for a period of 6 months. This period commenced on 12 March 2020.

The Uncooked Prawns Determination commenced on 7 January 2017 and specified uncooked prawns and uncooked prawn meat as a class of goods that must not be brought or imported into Australian territory (subject to some exceptions) for a period of 6 months. This period commenced on 7 January 2017. The amendments that have been made to the Uncooked Prawns Determination relate to exceptions.

The periods specified in the Cats and Dogs Determination and the Uncooked Prawns Determination have ended. This means that cats and dogs considered as companion or assistance animals imported from Malaysia to Australia, and uncooked prawns and uncooked prawn meat are no longer suspended goods under the Determinations. Although the relevant periods have ended and the Cats and Dogs Determination and the Uncooked Prawns Determination no longer have any substantive effect, they remain in force. The determinations which amended the Uncooked Prawns Determination also remain in force.

Impact and Effect

The Repeal Determination ensures that the redundant determinations made under subsection 182(1) of the Act, listed above, are repealed and no longer in force. This contributes towards removing redundant legislation from the Commonwealth statute book.

Consultation

The Department has conducted internal consultation on the repeal of the redundant determinations and the relevant internal stakeholders have provided their endorsement. External consultation was not considered necessary because the repeal of the determinations is a technical matter that does not have any practical effect.

Details / Operation

The Repeal Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

The Repeal Determination is repealed on the day after it commences.

Details of the Repeal Determination are set out in the [Attachment](#).

Other

Subsection 182(6) of the Act provides that the Repeal Determination is a legislative instrument for the purposes of the Legislation Act but that the instrument is not subject to disallowance. As such, 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 exemption from disallowance is set out in primary legislation. The justification for determinations made under subsection 182(1) of the Act to be exempt from disallowance is that, by allowing certain goods to be suspended for a temporary period for the purpose of managing an unacceptable level of biosecurity risk associated with the goods, the Director of

Biosecurity can take decisive action necessary to manage the biosecurity risk. The determinations implement a scientific and technical assessment of biosecurity risk that must be managed to protect human, plant or animal health and the environment. A determination made under section 182 may only be in place for a period of no longer than 6 months and is likely to be required on an urgent basis to manage an unacceptable level of biosecurity risk associated with relevant goods. Failure to appropriately manage biosecurity risks associated with relevant goods may have a significant impact on the economy and may lead to restrictions to Australia's exports by trading partners.

Details of the *Biosecurity (Suspended Goods) Repeal Determination 2025*

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (Suspended Goods) Repeal Determination 2025* (the Repeal Determination).

Section 2 – Commencement

This section provides that each provision of the Repeal Determination specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Item 1 in the table provides that the whole of the Repeal Determination commences on the day after the Repeal Determination is registered on the Federal Register of Legislation.

The note below the table provides that the table relates only to the provision of the Repeal Determination as originally made. It would not be amended to deal with later amendments of the Repeal Determination. The purpose of this note is to clarify that the commencement of any amendments is not reflected in this table.

Subsection 2(2) provides that any information in column 3 of the table in subsection 2(1) is not part of the Repeal Determination. This clarifies that information may be inserted in column 3 of the table, or information in it may be edited, in any published version of the Repeal Determination.

Section 3 – Authority

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

Section 4 – Reasons for making instrument.

Under subsection 182(5) of the Act, a determination made under subsection 182(1) of the Act must set out the reasons for making the determination.

This section provides, in accordance with subsection 182(5) of the Act, that the reason for making the Repeal Determination is that the periods of suspension specified in each of the instruments repealed by the Schedule to the Repeal Determination, or to which the amendments in those instruments relate, have ended. This means that the instruments are redundant.

Section 5 – Repeal

This section provides that the Repeal Determination is repealed on the day after it commences.

Section 6 – Schedules

This section gives effect to the amendment or repeal of instruments as set out in a Schedule to the Repeal Determination. Schedule 1 to the Repeal Determination provides that the instruments specified in the Schedule are repealed.

Schedule 1 – Repeals

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

Item [1] – The whole of the instrument

The *Biosecurity (Suspended Goods—Cats and Dogs Malaysia) Determination 2020* (the Cats and Dogs Determination) is made under subsection 182(1) of the Act and commenced on 12 March 2020. The Cats and Dogs Determination specifies that cats and dogs considered as companion or assistance animals imported from Malaysia to Australia are a class of goods that must not be brought or imported into Australian territory for a period of 6 months commencing on the commencement of the Cats and Dogs Determination (12 March 2020). This is subject to some exceptions, including under paragraph 7(2)(b) that the animal is a military working dog in the active service of the Australian Defence Force, Australian Federal Police and Australian Border Force that is returning from deployment for active service purposes.

The period during which the specified class of goods could not be brought or imported into Australian territory ended immediately before 12 September 2020. The Cats and Dogs Determination is therefore redundant; however, it remains in force.

This item repeals the whole of the Cats and Dogs Determination.

Biosecurity (Suspended Goods – Uncooked Prawns) Determination 2017

Item [2] – The whole of the instrument

The *Biosecurity (Suspended Goods – Uncooked Prawns) Determination 2017* (the Uncooked Prawns Determination) is made under subsection 182(1) of the Act and commenced on 7 January 2017. The Uncooked Prawns Determination specifies that uncooked prawns and uncooked prawn meat are a class of goods that must not be brought or imported into Australian territory for a period of 6 months commencing on the commencement of the Uncooked Prawns Determination (7 January 2017). This is subject to some exceptions, including under paragraph 7(3)(b) of the Uncooked Prawns Determination that the uncooked prawns or uncooked prawn meat are uncooked prawns or uncooked prawn meat processed into dumplings, spring rolls, samosas, other dim sum-type products and other similar products.

The period during which the specified class of goods could not be brought or imported into Australian territory ended immediately before 7 July 2017. The Uncooked Prawns Determination is therefore redundant; however, it remains in force.

This item repeals the whole of the Uncooked Prawns Determination.

Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination 2017

Item [3] – The whole of the instrument

The *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination 2017* (the Exceptions Determination) made amendments to the Uncooked Prawns Determination to include additional goods as being excepted from the suspension in the Uncooked Prawns Determination, such as uncooked prawns or uncooked prawn meat processed into dried prawns or a prawn-based food product that is shelf-stable.

All amendments made by the Exceptions Determination have since commenced and the Uncooked Prawns Determination, which was amended by the Exceptions Determination, is also now redundant.

This item repeals the whole of the Exceptions Determination.

Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 2) 2017

Item [4] - The whole of the instrument

The *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 2) 2017* (the Exceptions (No. 2) Determination) made amendments to the Uncooked Prawns Determination to include additional goods as being excepted from the suspension in the Uncooked Prawns Determination, such as uncooked prawns and uncooked prawn meat intended for use as laboratory or food samples for analysis.

All amendments made by the Exceptions (No. 2) Determination have since commenced and the Uncooked Prawns Determination, which was amended by the Exceptions (No. 2) Determination, is also now redundant.

This item repeals the whole of the Exceptions (No. 2) Determination.

Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 3) 2017

Item [5] - The whole of the instrument

The *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 3) 2017* (the Exceptions (No. 3) Determination) made amendments to the Uncooked Prawns Determination to include additional goods as being excepted from the suspension in the Uncooked Prawns Determination, such as Australian wild-caught prawns processed overseas and re-exported to Australia in certain circumstances.

All amendments made by the Exceptions (No. 3) Determination have since commenced and the Uncooked Prawns Determination, which was amended by the Exceptions (No. 3) Determination, is also now redundant.

This item repeals the whole of the Exceptions (No. 3) Determination.

Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 4) 2017

Item [6] – The whole of the instrument

The *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 4) 2017* (the Exceptions (No. 4) Determination) made amendments to the Uncooked Prawns Determination to include additional goods as being excepted from the suspension in the Uncooked Prawns Determination, such as uncooked prawns and uncooked prawn meat (whether or not mixed with other ingredients) that are marinated for human consumption and accompanied by a foreign country health certificate relating to the uncooked prawns or uncooked prawn meat.

All amendments made by the Exceptions (No. 4) Determination have since commenced and the Uncooked Prawns Determination, which was amended by the Exceptions (No. 4) Determination, is also now redundant.

This item repeals the whole of the Exceptions (No. 4) Determination.