

Policy for managing imported fresh cut flowers and foliage that do not comply with import conditions

This document sets out the department's policy for managing non-compliance detected in consignments of imported fresh cut flowers and foliage.

Conditionally non-prohibited goods (Section 174)

Division 1 of the *Biosecurity (Conditionally Non-prohibited Goods) Determination 2021 (Goods Determination)* specifies that plants (including a dead plant and any part of a plant such as flowers and foliage) are conditionally non-prohibited goods.

Under the *Biosecurity Act 2015 (Biosecurity Act)* conditionally non-prohibited goods must not be brought or imported into Australian territory unless specified conditions are complied with: see ss 174 and 186. The specified conditions for conditionally non-prohibited goods are set out in the Goods Determination: see s 12. Subject to certain exceptions,¹ the conditions are that relevant goods must not be brought or imported into Australia territory unless:

- the goods are covered by an import permit granted by the Director of Biosecurity, or
- if alternative conditions for bringing or importing the goods into Australian territory are specified in a provision in Division 1 of Part 2 of the Goods Determination—the alternative conditions are complied with.

A condition must be consistent with the objects of the Biosecurity Act which includes the management of biosecurity risk. A condition is an obligation imposed on an importer to do specified things to manage biosecurity risk. A condition explains how we can be assured that biosecurity risk can be managed to an acceptable level – including pre-export requirements such as phytosanitary certification. A condition must therefore be met every single time the goods are imported.

Fresh cut flowers and foliage for decorative purposes

Fresh cut flowers and foliage have the potential to introduce invertebrate pests, plant pathogens and weeds into Australia. Cut flowers have a high likelihood for insect infestation as insects naturally feed on them and are attracted to features such as flowers due to their colour and scent.

Invertebrate pests associated with cut flowers have the potential to cause economic (including environmental) consequences in Australia. Invertebrate pests can impose significant costs to producers by reducing yield, quality and marketability of a wide range of plant crops and requiring ongoing field management and control. Invertebrate pests can also vector exotic diseases including viruses and *Xylella fastidiosa*.

Alternative conditions

Alternative conditions for fresh cut flowers and foliage for decorative purposes other than for personal use² are specified in s 29 (Item 1) of the Goods Determination. The alternative conditions

¹ The exceptions provide for different rules in relation to goods that are made of or from, or contain, 2 or more different kinds of goods (see ss 12(3) – (5)) or goods to be brought or imported from Papua New Guinea into the protected zone area under the Torres Strait Treaty (see Div 4, Part 2).

² Section 29 contains other alternative conditions for specific kinds of cut flowers and foliage which are not relevant for the purposes of this policy, including fresh cut flowers and foliage for personal use (Item 2), *Lilium spp.* cut flowers other than for personal use (Item 3), and *Lilium spp.* cut flowers for personal use (Item 4).

are designed to ensure biosecurity risks are appropriately reduced offshore, before goods are imported into Australia:

| Alternative conditions—fresh cut flowers and foliage for decorative purposes | | |
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| Item | Column 1 Goods | Column 2 Alternative conditions |
| 1 | Fresh cut flowers and foliage other than for personal use | <p>All of the following:</p> <ul style="list-style-type: none"> (a) the goods are listed fresh cut flowers or foliage; (b) the goods are of a species that: <ul style="list-style-type: none"> (i) were produced in accordance with a systems approach in a country listed for that species and that systems approach in the List of Species of Fresh Cut Flowers and Foliage with Alternative Conditions for Import; or (ii) have been treated with methyl-bromide in a country listed for that species and that treatment in the List referred to in subparagraph (i); or (iii) have been treated with an alternative treatment in a country listed for that species and that treatment in the List referred to in subparagraph (i); (c) if the goods are of a species for which devitalisation treatment is listed in the List referred to in subparagraph (b)(i)—the listed devitalisation treatment has been applied to the goods; (d) the goods are free from pests; (e) the goods are packaged in pest-proof cartons or containers; (f) the goods are accompanied by a phytosanitary certificate stating: <ul style="list-style-type: none"> (i) the botanical name (including genus and species) of the goods; and (ii) the matters specified in paragraphs (a) to (e) |

Import permits

By amending the [List of Species of Fresh Cut Flowers and Foliage with Alternative Conditions for Import \(the list\)](#), the department can remove certain pre-export measures from countries linked to ongoing high rates of pest detections at the border (e.g. systems approach). In doing this the department can restrict future imports of flowers from these countries using the removed pre-export measure to those covered by an import permit granted by the Director of Biosecurity.

Managing consignments of fresh cut flowers and foliage imported in contravention of the Act

Import permit conditions and alternative conditions for fresh cut flowers and foliage are imposed to ensure biosecurity risks are appropriately reduced offshore, before import into Australia. Fresh cut flowers and foliage that have not been brought or imported into Australia in compliance with import permit conditions or the alternative conditions will have been imported in contravention of the Act.

Table 1. below reflects the differing level of biosecurity risks associated with non-compliance with import permit conditions and outlines biosecurity risk management measures for the goods (using Chapter 3 assessment and management powers) and actions against the importer to address the pathway risk. The management actions will be conveyed to biosecurity officers as decision support in the onshore outcomes section of the import permit or the BICON case.

Table 1. Management of biosecurity risk and compliance actions for lack of compliance with import conditions

| Non-compliance category | Biosecurity risk | Managing the biosecurity risk of the goods onshore | Actions to address non-compliance and to manage pathway risk |
|---|---|---|--|
| Document Assessment Outcomes | | | |
| <p>The goods are brought or imported into Australia and are not covered by an import permit, do not meet an import permit condition or do not meet the alternative conditions.</p> <p>Legislative reference: ss 186 and 187 of the Act; s 12, Item 1 of the Goods Determination</p> | <ul style="list-style-type: none"> Fresh cut flowers and foliage have the potential to introduce invertebrate pests, plant pathogens and weeds into Australia that could cause harm to plant health or the environment or have economic consequences. The Director of Biosecurity and the Director of Human Biosecurity have jointly determined that fresh cut flowers and foliage pose an unacceptable level of biosecurity risk and conditions are required to be met to bring the biosecurity risk to an acceptable level. | <ul style="list-style-type: none"> Where a person brings or imports conditionally non-prohibited goods into Australian territory without an import permit or having not complied with the alternative conditions or import permit conditions, it may be open to a biosecurity officer to suspect, on reasonable grounds, that the biosecurity risk associated with the goods is unacceptable because the conditions have not been met to reduce the biosecurity risk to an acceptable level. This will be relevant when deciding whether to require a biosecurity measure under Chapter 3 powers. It is recommended that goods are exported (Chapter 3 - Section 135) because inspection and treatments may not be effective in managing biosecurity risk. When directing for export importers are to be given the opportunity to provide | <p><i>On the Importer</i></p> <ul style="list-style-type: none"> The department will notify the importer of a suspected non-compliance with the <i>Biosecurity Act 2015</i> which may have constituted an offence or contravention of a civil penalty provision under section 186. Repeated non-compliance by importers may result in civil penalty action, criminal offence enforcement action or import permit revocation or suspension. <p><i>On the NPPO</i></p> <ul style="list-style-type: none"> The department will issue a non-compliance notification to the National Plant Protection Organisation of the exporting country requesting an investigation of the causes of the reported non-compliance with Australia's import requirements and, where necessary, the application of corrective actions. |

| Non-compliance category | Biosecurity risk | Managing the biosecurity risk of the goods onshore | Actions to address non-compliance and to manage pathway risk |
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| | | submissions in relation to the decision. | |
| Inspection Outcomes | | | |
| <p>The goods are inspected and they are found not to be free from pests and diseases of biosecurity concern.</p> <p>Legislative reference: ss 180 and 187 of the Biosecurity Act</p> | <ul style="list-style-type: none"> Any pests or disease symptoms detected in a 600 unit sample of the cut flower consignment may pose an unacceptable biosecurity risk due to its potential to cause harm to plant health and the environment. All pests and disease symptoms intercepted at the border on cut flowers are to be identified by Operational Science Services to determine their biosecurity risk and possible risk management measures. Advice is provided to the biosecurity officer to consider in their decision making. | <ul style="list-style-type: none"> Where a pest of biosecurity concern is identified, an officer may suspect on reasonable grounds that the level of biosecurity risk is unacceptable. This will be relevant when deciding which Chapter 3 biosecurity management powers is appropriate to apply. | <p><i>Under import permits</i></p> <ul style="list-style-type: none"> High levels of pest detections at the border over the life of an import permit may be information which can be used in a new risk assessment that results in the refusal of subsequent import permits, on the basis that the conditions are not adequately managing the risk. The detection of a national priority plant pest may result in the suspension or revocation of the current import permit. Repeated non-compliance by importers may also result in civil penalty action, criminal offence enforcement action. The department will advise NPPOs of any permits that have been refused, suspended or revoked as result of ongoing pest detections. This will include details of the non- |

| Non-compliance category | Biosecurity risk | Managing the biosecurity risk of the goods onshore | Actions to address non-compliance and to manage pathway risk |
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| | | | <p>compliances relevant to the decision.</p> <p><i>Under alternative conditions</i></p> <ul style="list-style-type: none"> The department will advise importers and NPPOs if non-compliance rates are unacceptable and request implementation of corrective actions. If corrective actions do not reduce the non-compliance rate to an acceptable level the department may require import permits or amend the alternative conditions. |
| <p>The goods are inspected at the Cargo Terminal Operator and a biosecurity officer or Biosecurity Industry Participant determines they are not packaged in pest-proof cartons or containers</p> <p>Legislative reference: ss 180 and 187 of the Biosecurity Act</p> | <ul style="list-style-type: none"> Pests that may be associated with goods that are not packaged in pest-proof cartons or containers may escape into the environment prior to inspection. | <ul style="list-style-type: none"> The goods must be secured to contain potential biosecurity risks during movement to the inspection point (Chapter 3 – Section 124). | <p><i>On the importer and NPPO</i></p> <ul style="list-style-type: none"> The department will advise the importer and issue a non-compliance notification to the National Plant Protection Organisation. |
| <p>The goods are inspected and a biosecurity officer determines that all or a part thereof are</p> | <ul style="list-style-type: none"> Fresh cut flowers and foliage have the potential to introduce invertebrate pests, plant pathogens and weeds into | <ul style="list-style-type: none"> Where a person brings or imports conditionally non-prohibited goods into Australian territory without an import | <p><i>On the Importer</i></p> <ul style="list-style-type: none"> The department will notify the importer of a suspected non-compliance with the <i>Biosecurity Act</i> |

| Non-compliance category | Biosecurity risk | Managing the biosecurity risk of the goods onshore | Actions to address non-compliance and to manage pathway risk |
|---|---|--|--|
| <p>not covered by an import permit.</p> <p>Legislative reference: ss 180 and 187 of the Biosecurity Act</p> | <p>Australia that could cause harm to plant health or the environment or have economic consequences.</p> <ul style="list-style-type: none"> The Director of Biosecurity has determined that fresh cut flowers and foliage pose an unacceptable level of biosecurity risk and conditions are required for bringing the biosecurity risk to an acceptable level. | <p>permit or having not complied with the alternative conditions or import permit conditions, it may be open to a biosecurity officer to suspect, on reasonable grounds, that the biosecurity risk associated with the goods is unacceptable because the conditions have not been met to reduce the biosecurity risk to an acceptable level. This will be relevant when deciding whether to require a biosecurity measure under Chapter 3 powers.</p> <ul style="list-style-type: none"> It is recommended that goods are exported (Chapter 3 - Section 135) because inspection and treatments may not be effective in managing biosecurity risk. When directing for export importers are to be given the opportunity to provide submissions in relation to the decision. | <p>2015 which may have constituted an offence or contravention of a civil penalty provision under section 186.</p> <ul style="list-style-type: none"> Repeated non-compliance by importers may result in civil penalty action, criminal offence enforcement action or import permit revocation or suspension. <p><i>On the NPPO</i></p> <ul style="list-style-type: none"> The department will issue a non-compliance notification to the National Plant Protection Organisation of the exporting country requesting an investigation of the causes of the reported non-compliance with Australia's import requirements and, where necessary, the application of corrective actions. |