

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Port of Dampier) Amendment (2021 Measures No. 1) Determination 2021

Legislative Authority

The *Biosecurity (First Point of Entry—Port of Dampier) Amendment (2021 Measures No. 1) Determination 2021* (Amendment Determination) is made under section 233 of the *Biosecurity Act 2015* (the Biosecurity Act).

The Amendment Determination makes amendments to the *Biosecurity (First Point of Entry—Port of Dampier) Determination 2019* (the Port of Dampier Determination). The Port of Dampier Determination is made under subsection 229(1) of the Biosecurity Act.

Section 233 of the Biosecurity Act provides that if a determination is made under subsection 229(1) in relation to a port, the Director who made the determination may vary or revoke the determination, or vary the conditions specified in the determination (including by imposing new conditions), if the Director is satisfied of any of the matters set out in paragraphs 233(a) – (e) of the Biosecurity Act. Paragraph 233(e) provides that one of these matters is that a circumstance prescribed by the regulations has occurred.

Paragraph 59(c) of the *Biosecurity Regulation 2016* (the Biosecurity Regulation) provides that a circumstance in which the Director may vary a determination under section 233 of the Biosecurity Act in relation to a port is that the operator of the port has requested the variation or the revocation of the determination, or the variation of the conditions. Operators at the Port of Dampier have requested variations to the Port of Dampier Determination.

Purpose

The purpose of the Amendment Determination is to vary the Port of Dampier Determination to:

- Determine the Port of Dampier as a first point of entry for freight containers.
- Designate Dampier Cargo Wharf within the Port of Dampier as a biosecurity entry point for freight containers.
- Designate the FDTTS Facility within the Port of Dampier as a biosecurity entry point for vessels other than non-commercial vessels and passenger vessels, baggage carried on a vessel other than a non-commercial vessel or a passenger vessel, freight containers, inorganic bulk goods, general goods, and waste.
- Designate the Toll Dampier Supply Base Terminal within the Port of Dampier as a biosecurity entry point for freight containers.

- Change all references to ‘Toll Dampier Supply Base’ in the Port of Dampier Determination to ‘Toll Dampier Supply Base Terminal’.

Background

The Biosecurity Act is about managing diseases and pests that may cause harm to human, animal or plant health or the environment, and provides the Commonwealth with powers to assess and manage biosecurity risk, among other things. ‘Biosecurity risk’ is defined in section 9 of the Biosecurity Act.

The Director of Biosecurity may vary the Port of Dampier Determination if a circumstance prescribed in the regulations has occurred: see paragraph 233(e) of the Biosecurity Act. For the purposes of the Amendment Determination, the delegate of the Director of Biosecurity was satisfied that a circumstance prescribed by the Biosecurity Regulation has occurred. Specifically, operators at the Port of Dampier requested variations to the Port of Dampier Determination, in accordance with paragraph 59(c) of the Biosecurity Regulation.

Impact and Effect

The Amendment Determination amends the Port of Dampier Determination to:

- Determine the Port of Dampier as a first point of entry for freight containers. As a result, the person in charge of or the operator of a vessel is no longer required to apply to the Department of Agriculture, Water and the Environment (Agriculture Department) for prior permission to unload freight containers at the Port of Dampier.
- Designate Dampier Cargo Wharf as a biosecurity entry point for freight containers. As a result, freight containers may be unloaded at Dampier Cargo Wharf without requiring prior permission from the Agriculture Department.
- Designate the FDTs Facility as a biosecurity entry point for vessels other than non-commercial vessels and passenger vessels, baggage carried on a vessel other than a non-commercial vessel or a passenger vessel, freight containers, inorganic bulk goods, general goods, and waste. This is a new biosecurity entry point location. As a result, these classes of vessels and goods may arrive at or be unloaded at the FDTs Facility without requiring prior permission from the Agriculture Department.
- Designate Toll Dampier Supply Base Terminal as a biosecurity entry point for freight containers. As a result, freight containers may be unloaded at the Toll Dampier Supply Base Terminal without requiring prior permission from the Agriculture Department.
- Change all references to ‘Toll Dampier Supply Base’ in the Port of Dampier Determination to ‘Toll Dampier Supply Base Terminal’. The effect of this amendment is to change the name of the biosecurity entry point, as requested by the operator.

The Amendment Determination amends the Port of Dampier Determination to list Dampier Cargo Wharf, the FDTs Facility and Toll Dampier Supply Base Terminal as the only biosecurity entry points for freight containers at the port. As a result, the person in charge of or the operator of a vessel must ensure that any freight containers to be unloaded from the vessel are brought to Dampier Cargo Wharf, the FDTs Facility or Toll Dampier Supply Base

Terminal, as soon as practicable upon arrival at the port. The only exceptions to this are if a biosecurity officer has given a direction under subsection 147(3) of the Biosecurity Act requiring the goods to be brought to an alternative biosecurity entry point, or if permission has been given under subsection 148(2) of the Biosecurity Act to bring the goods to an alternative biosecurity entry point.

The Amendment Determination ensures that vessels and goods that arrive in Australian territory from overseas arrive at locations that have the facilities available to assess any biosecurity risk associated with those vessels and goods and manage it to an acceptable level. Vessels or goods arriving at locations that do not have the capacity to manage the biosecurity risk pose a threat that a disease or pest may enter Australia, establish or spread and cause harm to Australia's human, plant and animal health, the environment and the economy.

Consultation

In considering whether to make the Amendment Determination to vary biosecurity entry points at the Port of Dampier, the Agriculture Department engaged directly with the operators of the relevant biosecurity entry points.

The Agriculture Department conducted onsite visits to the various biosecurity entry points, exchanged correspondence and undertook ongoing communication with the operators of those biosecurity entry points to confirm the nature of their operations, assess those operations and provide technical and administrative support.

The information and evidence gathered from onsite visits and from the operators has informed the decision that the Port of Dampier Determination be varied so that:

- The Port of Dampier is determined as a first point of entry for freight containers. The port has not been previously determined as a first point of entry for freight containers.
- Dampier Cargo Wharf is designated as a biosecurity entry point for freight containers. It is already a biosecurity entry point for: vessels other than non-commercial vessels; baggage carried on a vessel other than a non-commercial vessel or a passenger vessel; general goods, inorganic bulk goods; and waste.
- The FDTs Facility is designated as a biosecurity entry points for: vessels other than non-commercial vessels and passenger vessels, baggage carried on a vessel other than a non-commercial vessel or a passenger vessel, freight containers, inorganic bulk goods, general goods, and waste. The FDTs Facility is a new biosecurity entry point location at the Port of Dampier.
- Toll Dampier Supply Base Terminal is designated as a biosecurity entry point for freight containers. 'Toll Dampier Supply Base' is already a biosecurity entry point for: vessels other than non-commercial vessels and passenger vessels; baggage carried on a vessel other than a non-commercial vessel or a passenger vessel; general goods, inorganic bulk goods; and waste.
- All references to 'Toll Dampier Supply Base' in the Port of Dampier Determination are changed to 'Toll Dampier Supply Base Terminal'. The operator requested this name change.

The Department of Health has also been consulted in relation to the Amendment Determination. A delegate of the Director of Human Biosecurity provided a letter of endorsement on 28 March 2021.

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulation Impact Statement (RIS) for the Biosecurity Bill 2014 (OBPR ID: 25191). The OBPR advised on 31 March 2016 that a RIS is not required for the making of determinations under section 229 of the Act. The OBPR confirmed this advice in the context of amending determinations under section 233 of the Biosecurity Act on 30 May 2019.

Details / Operation

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

Other

Paragraph 234(b) of the Biosecurity Act provides that the Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act) and the instrument is not subject to disallowance. As such, a Statement of Compatibility with Human Rights is not required (subsection 15J(2) of the Legislation Act refers). The decision to vary the Port of Dampier Determination under section 233 of the Biosecurity Act is a technical and scientific decision to ensure biosecurity risk associated with vessels and goods can be satisfactorily managed at the Port of Dampier.

Biosecurity (First Point of Entry—Port of Dampier) Amendment (2021 Measures No. 1) Determination 2021

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (First Point of Entry—Port of Dampier) Amendment (2021 Measures No. 1) Determination 2021* (the Amendment Determination).

Section 2 – Commencement

This section provides for the Amendment Determination to commence on the day after it is registered.

Section 3 – Authority

This section provides that the Amendment Determination is made under section 233 of the *Biosecurity Act 2015*.

Section 4 – Schedules

This section provides that each instrument that is specified in a 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 a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Biosecurity (First Point of Entry—Port of Dampier) Determination 2019

The Schedule sets out the amendments made to the *Biosecurity (First Point of Entry—Port of Dampier) Determination 2019* (the Port of Dampier Determination).

1 Section 4

Item 1 amends section 4 of the Port of Dampier Determination, inserting the following text after the definition of *Act*:

freight container means a re-usable container:

- (a) that is designed to be used to transport goods by one or more modes of transport; and
- (b) that can be transferred from one mode of transport to another without unloading the goods from the container; and
- (c) that is known as a 20-foot-long container or a 40-foot-long container.

This is a consequential amendment to item 2 below which reflects that Port of Dampier is now a first point of entry for freight containers. Therefore, a definition of this class of goods is required in the Port of Dampier Determination. The definition of ‘freight container’ applies to both empty freight containers and freight containers carrying goods.

2 After paragraph 6a

Item 2 amends section 6 to insert the following text after paragraph 6(a):

(aa) freight containers;

The effect of this amendment is that Port of Dampier is now a first point of entry for freight containers. Operators at the Port of Dampier requested that the port be determined as a first point of entry for freight containers. The delegate of the Director of Biosecurity was satisfied that there would be an acceptable level of biosecurity risk associated with these operations at the Port of Dampier.

3 Section 7 (table item 2, column 2, after paragraph (d))

Item 3 amends section 7, table item 2, to add the following after paragraph (d) in column 2:

(da) FDTS Facility;

This effect of this amendment is that the FDTS Facility is a biosecurity entry point for vessels other than non-commercial vessels and passenger vessels within the Port of Dampier. The operator of the FDTS Facility requested that the location be a biosecurity entry point for vessels other than non-commercial vessels and passenger vessels. The delegate of the Director of Biosecurity was satisfied that there would be an acceptable level of biosecurity risk associated with these operations at the FDTS Facility.

4 Section 7 (table item 2)

Item 4 amends section 7, table item 2 of the Port of Dampier Determination to omit the text “Toll Dampier Supply Base” from column 2 and substitute “Toll Dampier Supply Base Terminal”.

This amendment reflects the change of name of “Toll Dampier Supply Base” to “Toll Dampier Supply Base Terminal”. The operator of the biosecurity entry point requested the change of name. There has been no change to the location of the biosecurity entry point.

5 Section 8 (table item 1, column 2, after paragraph (b))

Item 5 amends section 8 of the Port of Dampier Determination to add the following after paragraph (b) in column 2 of table item 1:

(ba) FDTS Facility;

This effect of this amendment is that the FDTS Facility is a biosecurity entry point for general goods and waste within the Port of Dampier. The operator of the FDTS Facility requested that the location be a biosecurity entry point for general goods and waste. The delegate of the

Director of Biosecurity was satisfied that there would be an acceptable level of biosecurity risk associated with these operations at the FDTS Facility.

6 Section 8 (table item 1)

Item 6 amends section 8, table item 1 of the Port of Dampier Determination to omit the text “Toll Dampier Supply Base” from column 2 and substitute “Toll Dampier Supply Base Terminal”.

This amendment reflects the change of name of “Toll Dampier Supply Base” to “Toll Dampier Supply Base Terminal”. The operator of the biosecurity entry point requested the change of name. There has been no change to the location of the biosecurity entry point.

7 Section 8 (table item 2, column 2, after paragraph (e))

Item 7 amends section 8 of the Port of Dampier Determination to add the following after paragraph (e) in column 2 of table item 2:

(ea) FDTS Facility;

This effect of this amendment is that the FDTS Facility is a biosecurity entry point for baggage carried on a vessel other than a non-commercial vessel or a passenger vessel within the Port of Dampier. The operator of the FDTS Facility requested that the location be a biosecurity entry point for baggage carried on a vessel other than a non-commercial vessel or a passenger vessel. The delegate of the Director of Biosecurity was satisfied that there would be an acceptable level of biosecurity risk associated with these operations at the FDTS Facility.

8 Section 8 (table item 2)

Item 8 amends section 8, table item 2 of the Port of Dampier Determination to omit the text “Toll Dampier Supply Base” from column 2 and substitute “Toll Dampier Supply Base Terminal”.

This amendment reflects the change of name of “Toll Dampier Supply Base” to “Toll Dampier Supply Base Terminal”. The operator of the biosecurity entry point requested the change of name. There has been no change to the location of the biosecurity entry point.

9 Section 8 (table item 3, column 2, after paragraph (d))

Item 9 amends section 8 of the Port of Dampier Determination to add the following after paragraph (d) in column 2 of table item 3:

(da) FDTS Facility;

This effect of this amendment is that the FDTS Facility is a biosecurity entry point for inorganic bulk goods within the Port of Dampier. The operator of the FDTS Facility requested that the location be a biosecurity entry point for inorganic bulk goods. The delegate of the Director of Biosecurity was satisfied that there would be an acceptable level of biosecurity risk associated with these operations at the FDTS Facility.

10 Section 8 (table item 3)

Item 10 amends section 8, table item 3 of the Port of Dampier Determination to omit the text “Toll Dampier Supply Base” from column 2 and substitute “Toll Dampier Supply Base Terminal”.

This effect of this amendment is to reflect the change of name of “Toll Dampier Supply Base” to “Toll Dampier Supply Base Terminal”. The operator of the biosecurity entry point requested the change of name. There has been no change to the location of the biosecurity entry point.

11 Section 8 (at the end of the table)

Item 11 amends section 8 of the Port of Dampier Determination to add the following at the end of the table:

4	Freight containers	The following areas: (a) Dampier Cargo Wharf; (b) FDTS Facility; (c) Toll Dampier Supply Base Terminal
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This effect of this amendment is that Dampier Cargo Wharf, the FDTS Facility and Toll Dampier Supply Base Terminal are biosecurity entry points for freight containers within the Port of Dampier. The operators of Dampier Cargo Wharf, the FDTS Facility and Toll Dampier Supply Base Terminal requested that these locations be biosecurity entry points for freight containers. The delegate of the Director of Biosecurity was satisfied that there would be an acceptable level of biosecurity risk associated with these operations.