

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

FIRST POINTS OF ENTRY PORTS DETERMINATIONS

Determinations covered by this statement

Biosecurity (First Point of Entry—Port Adelaide) Determination 2016.
Biosecurity (First Point of Entry—Port of Albany) Determination 2016.
Biosecurity (First Point of Entry—Port Alma) Determination 2016.
Biosecurity (First Point of Entry—Port of Ardrossan) Determination 2016.
Biosecurity (First Point of Entry—Port Bonython) Determination 2016.
Biosecurity (First Point of Entry—Port of Botany Bay) Determination 2016.
Biosecurity (First Point of Entry—Port of Bowen) Determination 2016.
Biosecurity (First Point of Entry—Port of Brisbane) Determination 2016.
Biosecurity (First Point of Entry—Port of Broome) Determination 2016.
Biosecurity (First Point of Entry—Port of Bunbury) Determination 2016.
Biosecurity (First Point of Entry—Port of Bundaberg) Determination 2016.
Biosecurity (First Point of Entry—Port of Burnie) Determination 2016.
Biosecurity (First Point of Entry—Port of Cairns) Determination 2016.
Biosecurity (First Point of Entry—Port of Carnarvon) Determination 2016.
Biosecurity (First Point of Entry—Port of Christmas Island) Determination 2016.
Biosecurity (First Point of Entry—Port of Cocos (Keeling) Islands) Determination 2016.
Biosecurity (First Point of Entry—Port of Coffs Harbour) Determination 2016.
Biosecurity (First Point of Entry—Port of Dampier) Determination 2016.
Biosecurity (First Point of Entry—Port of Darwin) Determination 2016.
Biosecurity (First Point of Entry—Port of Derby) Determination 2016.
Biosecurity (First Point of Entry—Port of Devonport) Determination 2016.
Biosecurity (First Point of Entry—Port of Eden) Determination 2016.
Biosecurity (First Point of Entry—Port of Esperance) Determination 2016.
Biosecurity (First Point of Entry—Port of Exmouth) Determination 2016.
Biosecurity (First Point of Entry—Port of Fremantle) Determination 2016.
Biosecurity (First Point of Entry—Port of Geelong) Determination 2016.
Biosecurity (First Point of Entry—Port of Geraldton) Determination 2016.
Biosecurity (First Point of Entry—Port Giles) Determination 2016.
Biosecurity (First Point of Entry—Port of Gladstone) Determination 2016.

Biosecurity (First Point of Entry—Port of Hay Point) Determination 2016.
Biosecurity (First Point of Entry—Port Hedland) Determination 2016.
Biosecurity (First Point of Entry—Port of Hobart) Determination 2016.
Biosecurity (First Point of Entry—Port Huon) Determination 2016.
Biosecurity (First Point of Entry—Port Kembla) Determination 2016.
Biosecurity (First Point of Entry—Port Kennedy) Determination 2016.
Biosecurity (First Point of Entry—Port Latta) Determination 2016.
Biosecurity (First Point of Entry—Port of Launceston) Determination 2016.
Biosecurity (First Point of Entry—Port of Lincoln) Determination 2016.
Biosecurity (First Point of Entry—Port of Lord Howe Island) Determination 2016.
Biosecurity (First Point of Entry—Port of Lucinda) Determination 2016.
Biosecurity (First Point of Entry—Port of Mackay) Determination 2016.
Biosecurity (First Point of Entry—Port of Melbourne) Determination 2016.
Biosecurity (First Point of Entry—Port of Melville Bay) Determination 2016.
Biosecurity (First Point of Entry—Port of Milner Bay) Determination 2016.
Biosecurity (First Point of Entry—Port of Mourilyan) Determination 2016.
Biosecurity (First Point of Entry—Port of Newcastle) Determination 2016.
Biosecurity (First Point of Entry—Port of Norfolk Island) Determination 2016.
Biosecurity (First Point of Entry—Port Pirie) Determination 2016.
Biosecurity (First Point of Entry—Port of Portland) Determination 2016.
Biosecurity (First Point of Entry—Port of Spring Bay) Determination 2016.
Biosecurity (First Point of Entry—Port of Stanley) Determination 2016.
Biosecurity (First Point of Entry—Port of Sydney) Determination 2016.
Biosecurity (First Point of Entry—Port of Thevenard) Determination 2016.
Biosecurity (First Point of Entry—Port of Townsville) Determination 2016.
Biosecurity (First Point of Entry—Port Walcott) Determination 2016.
Biosecurity (First Point of Entry—Port of Wallaroo) Determination 2016.
Biosecurity (First Point of Entry—Port of Weipa) Determination 2016.
Biosecurity (First Point of Entry—Port of Westernport) Determination 2016
Biosecurity (First Point of Entry—Port of Whyalla) Determination 2016
Biosecurity (First Point of Entry—Port of Wyndham) Determination 2016
Biosecurity (First Point of Entry—Port of Yamba) 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 229(1) of the Biosecurity Act provides that the Director of Biosecurity or the Director of Human Biosecurity may determine that a specified port in Australian territory is a first point of entry for vessels generally, or a specified class of vessels that are subject to biosecurity control, and/or specified goods, or a specified class of goods that are subject to biosecurity control or in relation to which an exposed goods order is in force.

Subsection 229(2) of the Biosecurity Act provides that the Director of Biosecurity or the Director of Human Biosecurity may make a determination under subsection (1) in relation to a port only if the Director who is proposing to make the determination is satisfied that the requirements (if any) prescribed by the regulations in relation to the port are met and the level of biosecurity risk associated with operations carried out at the port is acceptable.

A Director may take into consideration a range of factors when determining whether he or she is satisfied that the level of biosecurity risk associated with the operations at the port is acceptable. This may include the location, surrounding environment, facilities available to manage biosecurity risk, and any other matters including those of national interest, or with economic or defence considerations.

Item (1) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Biosecurity Transitional Provision Act) provides that despite subsection 229(2) of the Biosecurity Act, the Director of Biosecurity or the Director of Human Biosecurity may make a determination under subsection 229(1) of that Act in relation to a port even if the Director is not satisfied of the matters referred to in subsection 229(2) of the Act in relation to the port. Item (2) of Schedule 3 to the Biosecurity Transitional Provision Act provides that a determination made relying on item (1) of that Act provides that the determination must not be expressed or varied to have effect for a period that is longer than the transition period for the port. Item (6) of Schedule 3 to the Biosecurity Transitional Provision Act provides that the transition period is three years starting from when the Biosecurity Act commences.

Purpose

The purpose of the First Points of Entry Ports Determinations (the Determinations) is to ensure that overseas vessels and any goods on board enter Australia at a designated place that has the appropriate facilities to effectively manage any biosecurity risk.

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 these Determinations.

Impact and Effect

Operators at ports that become First Points of Entry will need to meet certain prescribed requirements to ensure that biosecurity risks associated with their operations can be adequately managed. These requirements may relate to physical infrastructure or facilities, processes or systems to manage biosecurity risks. Introduction of these requirements will decrease the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy.

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 would commence on 16 June 2016. This included holding forums targeting peak industry bodies in Canberra and major city regions in Australia, which were attended by over 700 representatives overall from shipping, ports, petroleum, airlines, airports, freight, cargo, food and beverage industries, research, education, science, plant and animal health and state, territory and federal governments.

Meetings and workshops were also held 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. 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 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 department consulted key port stakeholder groups on drafting of the minimum standards which show that the prescribed First Point of Entry requirements are met. This consultation is ongoing and the department will continue to consult directly with port operators during the transition phase to establish how each may meet the requirements of the regulation by June 2019.

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. The department consulted the Office of Parliamentary Counsel in the drafting of these Determinations.

These Determinations are legislative instruments for the purposes of the *Legislation Act 2003*. However, they are not subject to disallowance under section 228 of the Biosecurity Act. The decision to make a determination under subsection 229(1) of the Biosecurity Act is a technical and scientific based decision based on whether the biosecurity risk can be satisfactorily managed.

A Statement of Compatibility with Human Rights was prepared for the Biosecurity Act. An additional statement is not required for these Determinations as they are not subject to disallowance.

Details of the First Points of Entry (ports) determinations

Part 1 Preliminary

Section 1 – Name

This section provides that the name of each of the Determinations is the First Point of Entry [port name] Determination.

Section 2 – Commencement

This section provides for the First Points of Entry Ports Determinations to commence on 16 June 2016.

Section 3 – Authority

This section provides that the First Points of Entry Ports Determinations are made under subsection 229(1) of the *Biosecurity Act 2015* and as permitted by subitem 1(1) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*.

Section 4 – Definitions

This section provides definitions for the First Points of Entry Ports Determinations.

Part 2 First Point of Entry

First Point of Entry – vessels

This section specifies if a First Point of Entry is a First Point of Entry for vessels generally, or specified classes of vessels.

First Point of Entry – goods

This section specifies if a First Point of Entry is a First Point of Entry for goods generally, or specified classes of goods. For instance, in the Port of Darwin determination this section specifies that the Port of Darwin is a First Point of Entry for all goods other than animals.

First Point of Entry – [class of goods]

Where the preceding section specifies classes of goods to which a First Point of Entry does not apply, this section will specify if the First Point of Entry is a First Point of Entry for any exceptions to the specific goods or classes of goods to which it would not apply.

For instance, in the Port of Darwin Determination this section specifies that the Port of Darwin is a First Point of Entry for live domestic cats and domestic dogs brought or imported from New Zealand.

Part 3 Biosecurity Entry Points

Biosecurity Entry Points – vessels

This part specifies areas within the Firsts Points of Entry which are designated as biosecurity entry points for vessels generally, or for specified classes of vessels. For example, the Port of Brisbane determination specifies that the Rivergate Marina is a biosecurity entry point for non-commercial vessels, which includes yachts.

Where biosecurity entry points are specified, the vessels must be brought to that biosecurity entry point as soon as practicable after arrival. Where a biosecurity entry point is not specified, a note will state that no areas of the port are designated as biosecurity entry points.

Biosecurity Entry Points – goods

This part specifies areas within the Firsts Points of Entry which are designated as biosecurity entry points for goods generally, or for specified classes of goods. For example, the Port of Brisbane Determination specifies that the each of berths 1 to 12 at Fisherman Islands are biosecurity entry points for sea containers.

Where biosecurity entry points are specified, the goods must be brought to that biosecurity entry point as soon as practicable after arrival. Where a biosecurity entry point is not specified, a note will state that no areas of the port are designated as biosecurity entry points.

Part 4 – Conditions

This part specifies conditions which must be met by the owners or lessees of the ports or a person or body responsible for carrying out operations at the ports, and any conditions imposed on the operations at the ports. For example, the Port of Brisbane determination specifies that vessels and goods must not enter certain parts of the Port of Brisbane.

Part 5 – Period of Effect

This part provides for the period in which the First Points of Entry Ports Determinations are in effect.