

## **EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

*Biosecurity (First Points of Entry Determinations) Amendment (Periods of Effect)  
Determination 2019*

### **Legislative Authority**

The *Biosecurity Act 2015* (the Biosecurity Act) provides the Commonwealth with powers to assess and manage Biosecurity risk, among other things. Biosecurity risk is defined at sections 9 and 310 of the Biosecurity Act.

Subsections 223(1) and 229(1) of the Biosecurity Act provide that the Director of Biosecurity or the Director of Human Biosecurity (Director) may determine that a specified landing place or port in Australian territory is a first point of entry for aircraft or vessels generally, or a specified class of aircraft or 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.

Subsections 223(2) and 229(2) of the Biosecurity Act provide that the Director may make a determination under subsection (1) in relation to a landing place or 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 landing place or port are met and the level of biosecurity risk associated with operations carried out at the landing place port is acceptable.

Subsections 226(1) and 232(1) of the Biosecurity Act provide, respectively, that a determination made under subsection 223(1) and 229(1) in relation to a landing place or in relation to a port may be expressed to have an effect for a specified period of time. Section 226(2) and 232(2) Biosecurity Act provide, respectively, that the Director who made the determination may vary the determination to extend or shorten the period of effect.

Section 227 and section 233 of the Biosecurity Act provide, respectively, that if a determination is made under subsection 223(1) and 229(1) in relation to a landing place or in relation to a port, the Director who made the determination may vary the determination if the Director is satisfied of any of the matters set out in paragraphs 227(a) – (e) and 233(a) – (e) of the Biosecurity Act. Paragraphs 227(e) and 233(e) provide that one of these matters is that a circumstance prescribed by regulation has occurred. Paragraph 57(c) of the *Biosecurity Regulation 2016* relevantly provides that a circumstance in which the Director may vary a determination made under subsection 223(1) of the Biosecurity Act in relation to a landing place is that the operator of the landing place has requested the variation of the determination. Paragraph 59(c) relevantly provides that one of the circumstances in which the Director may vary a determination made under subsection 229(1) of the Biosecurity Act in relation to a port is that the operator of the port has requested the variation.

## Purpose

The purpose of the *Biosecurity (First Points of Entry Determinations) Amendment (Periods of Effect) Determination 2019* (Amendment Instrument) is to vary the date of repeal in the following First Point of Entry Determinations:

- *Biosecurity (First Point of Entry—Broome Airport) Determination 2016* (Broome Airport Determination)
- *Biosecurity (First Point of Entry—Christmas Island International Airport) Determination 2016* (Christmas Island International Airport Determination)
- *Biosecurity (First Point of Entry—Cocos (Keeling) Islands Airport) Determination 2016* (Cocos (Keeling) Islands Airport Determination)
- *Biosecurity (First Point of Entry—Essendon Airport) Determination 2016* (Essendon Airport Determination)
- *Biosecurity (First Point of Entry—Kingsford Smith Airport, Sydney) Determination 2016* (Kingsford Smith Airport, Sydney Determination)
- *Biosecurity (First Point of Entry—Lord Howe Island Airport) Determination 2016* (Lord Howe Island Airport Determination)
- *Biosecurity (First Point of Entry—Norfolk Island Airport) Determination 2016* (Norfolk Island Airport Determination)
- *Biosecurity (First Point of Entry—Lord Howe Island Port) Determination 2016* (Lord Howe Island Port Determination)
- *Biosecurity (First Point of Entry—Port Adelaide) Determination 2016* (Port Adelaide Determination)
- *Biosecurity (First Point of Entry—Port Hedland) Determination 2016* (Port Hedland Determination)
- *Biosecurity (First Point of Entry—Port of Albany) Determination 2016* (Port of Albany Determination)
- *Biosecurity (First Point of Entry—Port of Cascade Bay, Norfolk Island) Determination 2016* (Port of Cascade Bay, Norfolk Island Determination)
- *Biosecurity (First Point of Entry—Port of Ball Bay, Norfolk Island) Determination 2016* (Port of Ball Bay, Norfolk Island Determination)
- *Biosecurity (First Point of Entry—Port of Sydney Bay (Kingston), Norfolk Island) Determination 2016* (Port of Sydney Bay (Kingston), Norfolk Island Determination)
- *Biosecurity (First Point of Entry—Port of Christmas Island) Determination 2016* (Port of Christmas Island Determination)
- *Biosecurity (First Point of Entry—Port of Cocos (Keeling) Islands) Determination 2016* (Port of Cocos (Keeling) Islands Determination)
- *Biosecurity (First Point of Entry—Port of Coffs Harbour) Determination 2016* (Port of Coffs Harbour Determination)
- *Biosecurity (First Point of Entry—Port of Dampier) Determination 2016* (Port of Dampier Determination)
- *Biosecurity (First Point of Entry—Port of Darwin) Determination 2016* (Port of Darwin Determination)
- *Biosecurity (First Point of Entry—Port of Eden) Determination 2016* (Port of Eden Determination)
- *Biosecurity (First Point of Entry—Port of Esperance) Determination 2016* (Port of Esperance Determination)

- *Biosecurity (First Point of Entry—Port of Fremantle) Determination 2016* (Port of Fremantle Determination)
- *Biosecurity (First Point of Entry—Port of Geelong) Determination 2016* (Port of Geelong Determination)
- *Biosecurity (First Point of Entry—Port of Mackay) Determination 2016* (Port of Mackay Determination)
- *Biosecurity (First Point of Entry—Port of Melbourne) Determination 2016* (Port of Melbourne Determination)
- *Biosecurity (First Point of Entry—Port of Sydney) Determination 2016* (Port of Sydney Determination)

## **Background**

Subitem 1(1) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Transitional Act) provides that despite subsections 223(2) and 229(2) of the Biosecurity Act, the Director may make a determination under subsection 233(1) or 229(1) of that the Biosecurity Act in relation to a landing place or port even if the Director is not satisfied of the matters referred to in subsection 223(2) or 229(2) of the Biosecurity Act in relation to the landing place or port.

To support commencement of the Biosecurity Act, first point of entry determinations were made in relation to landing places and ports under subsections 223(1) and 229(1) respectively, as permitted by subitem (1)(1) of Schedule 3 to the Transitional Act, to allow ports and landing places that facilitate international arrivals of goods, vessels or aircraft to time to be fully compliant with the necessary requirements under section 223 and 229 of the Biosecurity Act. The period of effect for these determinations is the ‘transition period’, which is defined in subitem 1(6) of Schedule 3 to the Transitional Act to be three years after the Biosecurity Act commences. Therefore, these determinations cease on either 15 June 2019 or 16 June 2019.

A related instrument, the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2019* extends the transitional period for a specified period of time for certain landing places and ports to which these determinations relate.

## **Impact and Effect**

The Amendment Instrument varies the repeal date for a number of determinations to provide the anticipated time needed for that landing place or port to be fully compliant with the necessary requirements for making determinations for landing places and ports under sections 223 and 229 of the Biosecurity Act.

## **Consultation**

In considering whether the landing places or ports met the necessary requirements to make first point of entry determinations under the Biosecurity Act, or whether to vary the repeal date of the determinations, the Agriculture Department (department) engaged directly with operators at ports and landing places to confirm the nature of their operations, the existing infrastructure and facilities and reviewed their compliance with legislative requirements.

Operators at each of the landing places and ports provided in the Amendment Instrument have advised the Department that they would not be able to meet the necessary requirements for making a determination under sections 223 and 220 of the Biosecurity Act before the end of the transition period.

The Department of Health has also been consulted in relation to the Determinations.

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 and, further to this, confirmed this advice in the context of the Amending Instrument on 30 May 2019.

### **Details / Operation**

Details of the Amendment Instrument are set out in the Attachment.

### **Other**

The Amendment Instrument is a legislative instruments for the purposes of the *Legislation Act 2003*. However, under section 228 of the Biosecurity Act it is not subject to disallowance and so a Statement of Compatibility with Human Rights was not required to be prepared.

**Biosecurity (First Points of Entry Determinations) Amendment (Periods of Effect) Determination 2019**

Part 1 Preliminary

**Section 1 – Name**

This section provides that the instrument is the *Biosecurity (First Points of Entry Determinations) Amendment (Periods of Effect) Determination 2019* (the Amendment Instrument).

**Section 2 – Commencement**

This section provides for the Amendment Instrument to commence on 15 June 2019.

**Section 3 – Authority**

This section provides that the Amendment Instrument is made under subsection 226(2) and section 227 and subsection 232(2) and section 233 of the *Biosecurity Act 2015*.

**Section 4 – Schedules**

This section provides that a Schedule is attached to the instrument that sets out each determination amended by the Amending Instrument.

**Schedule 1 – Amendments**

Part 1 Landing places

This section repeals the section called “Period of effect” in each landing place determination listed and substitutes a new heading, “Repeal of this instrument” that provides a date of repeal for the instrument.

For the Broome Airport Determination and Lord Howe Island Airport Determination, section 7 is repealed and the following text is substituted:

**“7 Repeal of this instrument**

This instrument is repealed at the end of 15 June 2020.”

For the Christmas Island International Airport Determination and Cocos (Keeling) Islands Airport Determination, section 7 is repealed and the following text is substituted:

**“7 Repeal of this instrument**

This instrument is repealed at the end of 15 June 2021.”

For the Essendon Airport Determination, section 7 is repealed and the following text is substituted:

**“7 Repeal of this instrument**

This instrument is repealed at the end of 15 December 2019.”

For the Kingsford Smith Airport, Sydney Determination and Norfolk Island Airport Determination, section 9 is repealed and the following text is substituted:

**9 Repeal of this instrument**

This instrument is repealed at the end of 15 June 2021.

Part 2 Ports

This section repeals the section called “Period of effect” in each port determination listed and substitutes a new heading, “Repeal of this instrument” that provides a date of repeal for the instrument.

For the Lord Howe Island Port Determination, section 7 is repealed and the following text is substituted:

**“7 Repeal of this instrument**

This instrument is repealed at the end of 15 June 2020”.

For the Port Adelaide Determination and the Port of Melbourne Determination, section 10 is repealed and the following text is substituted:

**“10 Repeal of this instrument**

This instrument is repealed at the end of 15 June 2021.”

For the following:

- Port Hedland Determination
- Port of Dampier Determination
- Port of Fremantle Determination
- Port of Geelong Determination
- Port of Mackay Determination
- Port of Sydney Determination

Section 9 is repealed and the following text is substituted:

**“9 Repeal of this instrument**

This instrument is repealed at the end of 15 December 2019.”

For the following:

- Port of Albany Determination
- Port of Coffs Harbour Determination
- Port of Esperance Determination

Section 7 is repealed and the following text is substituted:

**“7 Repeal of this instrument**

This instrument is repealed at the end of 15 December 2019.”

For the following:

- Port of Ball Bay, Norfolk Island Determination
- Port of Cascade Bay, Norfolk Island Determination
- Port of Cocos (Keeling) Islands) Determination
- Port of Sydney Bay (Kingston), Norfolk Island Determination

Section 7 is repealed and the following text is substituted:

**“7 Repeal of this instrument**

This instrument is repealed at the end of 15 June 2021.”

For the Port of Christmas Island Determination Section 9 is repealed and the following text is substituted:

**“9 Repeal of this instrument**

This instrument is repealed at the end of 15 June 2021.”

For the Port of Darwin Determination Section 11 is repealed and the following text is substituted:

**“11 Repeal of this instrument**

This instrument is repealed at the end of 15 December 2019.”

For the Port of Eden Determination Section 8 is repealed and the following text is substituted:

**“8 Repeal of this instrument**

This instrument is repealed at the end of 15 December 2019.”