

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) (No.2) Instrument 2019

Legislative Authority

The *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Transitional Act) provides for consequential and transitional matters arising from the enactment of the *Biosecurity Act 2015* (Biosecurity Act).

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.

Subitem 1(4) of Schedule 3 to the Transitional Act provides that if the Director of Biosecurity or the Director of Human Biosecurity is satisfied that:

- a) the requirements referred to in subsection 223(2) of the Biosecurity Act will not be able to be met in relation to a landing place referred to in subitem (2) by the end of the transition period; or
- b) the requirements referred to in subsection 229(2) of the Biosecurity Act will not be able to be met in relation to a port referred to in subitem (2) by the end of the transition period;

the relevant Director may, by legislative instrument, extend the transition period in relation to the landing place or port.

Purpose

The purpose of the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument (No. 2) 2019* (Extension Instrument No. 2) is to extend the transition period for a landing place, Alice Springs Airport, and a port, the Port of Derby.

Background

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 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.

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

To support commencement of the Biosecurity Act, first point of entry determinations were made under Item (1) of Schedule 3 to the Biosecurity Transitional Provision Act to allow ports and landing places that currently facilitated international arrivals of goods, vessels or aircraft to continue their operations while working towards meeting regulatory requirements.

Item (2) of Schedule 3 to the Biosecurity Transitional Provision Act provides that a determination made relying on item (1) of that Act must not be expressed or varied to have effect for a period that is longer than the transition period for the landing place or 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 commenced. The transition period ceases on 15 June, 2019.

A related instrument, the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2019* (the first Extension Instrument), was made on 4 June, 2019. This instrument extends the transition period for an additional seven landing places and 19 ports for specified periods of time.

Impact and Effect

The Extension Instrument No. 2 enables the Director of Biosecurity to vary the period of effect for two first point of entry determinations that were made by relying on transitional provisions contained in subitem 1(1) of Schedule 3 to the Transitional Act. The Extension Instrument No. 2 extends the transitional period for a landing place, Alice Springs Airport, and a port, the Port of Derby, for a specified period of time. The time period in the landing place and the port reflects the anticipated time needed for that landing place and that port to be fully compliant with the necessary requirements for making determinations for landing places and ports under section 223 and 229 of the Biosecurity Act.

Consultation

In considering whether the landing places and ports met the requirements to make first point of entry determinations under the Biosecurity Act (Determinations), or whether to extend the transition period for the landing place or port, the Agriculture Department (department) engaged directly with operators at the port and landing place to confirm the nature of their operations, the existing infrastructure and facilities and reviewed their compliance with legislative requirements.

Operators at the landing place and port provided in the Extension Instrument No. 2 advised the department that they would not be able to meet the necessary requirements for making a determination under sections 223 and 229 of the Biosecurity Act before the end of the transition period.

The Department of Health was consulted in relation to the Extension Instrument No. 2.

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). OBPR advised on 31 March 2016 that a RIS is not required and, further to this, confirmed this advice on 30 May 2019 in the context of extension instruments made under the Transitional Act.

Details / Operation

Details of the Extension Instrument No. 2 are set out in the Attachment.

Other

The Extension Instrument No. 2 is a legislative instrument for the purposes of the *Legislation Act 2003*. However, under subitem 1(5) of Schedule 3 to the Transitional Act, it is not subject to disallowance and so a Statement of Compatibility with Human Rights was not required to be prepared.

**Details of the Biosecurity (Consequential Amendments and Transitional Provisions)
(Extension of First Points of Entry Determinations) Instrument (No. 2) 2019**

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument (No. 2) 2019* (Extension Instrument No. 2).

Section 2 – Commencement

This section provides for the Extension Instrument No. 2 to commence the day after the instrument is registered.

Section 3 – Authority

This section provides that the Extension Instrument No. 2 is made under subitem 1(4) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*.

Section 4 – Extension of transition period for Alice Springs Airport

This section provides that the transition period for Alice Springs Airport is extended until the end of 15 June 2021.

Section 5 – Extension of transition period for Port of Derby

This section provides that the transition period for the Port of Derby is extended until the end of 15 June 2021.