

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Determinations covered by this Explanatory Statement

Biosecurity (First Point of Entry—Port of Albany) Determination 2019
Biosecurity (First Point of Entry—Port of Coffs Harbour) Determination 2019
Biosecurity (First Point of Entry—Port of Dampier) Determination 2019
Biosecurity (First Point of Entry—Port of Darwin) Determination 2019
Biosecurity (First Point of Entry—Port of Eden) Determination 2019
Biosecurity (First Point of Entry—Port of Esperance) Determination 2019
Biosecurity (First Point of Entry—Port of Fremantle) Determination 2019
Biosecurity (First Point of Entry—Port of Geelong) Determination 2019
Biosecurity (First Point of Entry—Port of Mackay) Determination 2019
Biosecurity (First Point of Entry—Port of Melbourne) Determination 2019
Biosecurity (First Point of Entry—Port of Port Hedland) Determination 2019
Biosecurity (First Point of Entry—Port of Sydney) Determination 2019

Legislative Authority

The *Biosecurity Act 2015* (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 at sections 9 and 310 of the Biosecurity Act.

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 any of the following:

- vessels generally, or a specified class of vessels that are subject to biosecurity control;
- 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 229(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.

Section 230 provides that a determination under subsection 229(1) in relation to a port may designate a specified area of the port as a biosecurity entry point for vessels generally, or a specified class of vessels that are subject to biosecurity control, and/or 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 231(1) provides that a determination under subsection 229(1) in relation to a port may be made subject to conditions specified in the determination. Subsection 231(2) provides that without limiting subsection 231(1), the conditions may relate to an owner or lessee of the port, a person or body that is responsible for carrying out operations at the port or/and the operations carried out at the port.

Purpose

The purpose of the:

- *Biosecurity (First Point of Entry—Port of Albany) Determination 2019* (Port of Albany Determination)
- *Biosecurity (First Point of Entry—Port of Coffs Harbour) Determination 2019* (Port of Coffs Harbour Determination)
- *Biosecurity (First Point of Entry—Port of Dampier) Determination 2019* (Port of Dampier Determination)
- *Biosecurity (First Point of Entry—Port of Darwin) Determination 2019* (Port of Darwin Determination)
- *Biosecurity (First Point of Entry—Port of Eden) Determination 2019* (Port of Eden Determination)
- *Biosecurity (First Point of Entry—Port of Esperance) Determination 2019* (Port of Esperance Determination)
- *Biosecurity (First Point of Entry—Port of Fremantle) Determination 2019* (Port of Fremantle Determination)
- *Biosecurity (First Point of Entry—Port of Geelong) Determination 2019* (Port of Geelong Determination)
- *Biosecurity (First Point of Entry—Port of Mackay) Determination 2019* (Port of Mackay Determination)
- *Biosecurity (First Point of Entry—Port of Melbourne) Determination 2019* (Port of Melbourne Determination)
- *Biosecurity (First Point of Entry—Port of Port Hedland) Determination 2019* (Port of Port Hedland Determination)
- *Biosecurity (First Point of Entry—Port of Sydney) Determination 2019* (Port of Sydney Determination)

(collectively, the Determinations) is to:

- determine that the ports that are the subject of the Determinations are first points of entry for the purposes of section 229 of the Biosecurity Act;
- designate specified areas of those ports as biosecurity entry points for the purposes of section 230 of the Biosecurity Act where required; and
- identify the conditions that the Determinations are subject to in accordance with section 231 of the Biosecurity Act.

Background

The *Quarantine Act 1908* (Quarantine Act) was replaced by the Biosecurity Act upon its commencement on 16 June 2016. The *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Transitional Act) provided transitional and consequential provisions to support the commencement of the Biosecurity Act as it replaced the Quarantine Act. The Transitional Act provided transitional provisions to enable the requirements for first

points of entry to be met as the transition from the Quarantine Act to the Biosecurity Act occurred. This was achieved through ‘transitional’ first point of entry determinations that would remain in effect for three years (the transition period). The transition period for a number of transitional determinations ended on 15 June 2019, meaning that such transitional determinations cease to have effect on that day.

The Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2019 enabled the Director of Biosecurity to vary the period of effect for 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 transition period for the Determinations was extended for six months, ending on 15 December 2019. The extension reflected the anticipated time needed for the port operators to be fully compliant with the necessary requirements for making determinations for ports under section 229 of the Biosecurity Act.

For the purposes of the Determinations, the Director of Biosecurity was satisfied that each port (that was previously subject to a transitional Determination) met the requirements of subsection 229(2) of the Biosecurity Act. The Director of Biosecurity specified that such ports were to be first points of entry for the purposes of subsection 229(1) of the Biosecurity Act.

Impact and Effect

The Determinations ensure that vessels and goods that arrive in Australian territory from overseas arrive at a location that has the facilities available to assess any biosecurity risk and manage it to an acceptable level. Vessels or goods arriving at a port that is not a first point of entry, and which does 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 the ports met the requirements of subsection 229(2) of the Biosecurity Act, the Department of Agriculture (the Department) engaged directly with operators at ports over the transition period. The Department conducted onsite visits, exchanged correspondence and undertook ongoing communication with operators to confirm the nature of their operations, assess those operations against regulatory requirements and provide technical and administrative support. The Department sought and received support by all first point of entry and biosecurity entry point operators, as well as clarification of the activities carried out at those locations. This has informed the decisions regarding which classes of vessels and goods are listed as permitted at each FPOE. It has also informed the decisions about the areas of each FPOE that are biosecurity entry points for classes of vessels and goods in the Determinations.

The Department of Health has 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). OBPR advised on 31 March 2016 that a RIS is not required and, further to this, confirmed this advice in the context of making biosecurity first point of entry determinations on 9 May 2019.

Details / Operation

Details of the Determinations are set out in the Attachment.

Other

These Determinations are legislative instruments for the purposes of the *Legislation Act 2003*. However, under section 234 of the Biosecurity Act, they are not subject to disallowance. The decision to make a determination under subsection 229(1) of the Biosecurity Act is a technical and scientific decision to ensure biosecurity risk can be satisfactorily managed at the specified ports.

Details of the Biosecurity (First Point of Entry [Port]) Determinations

Part 1 Preliminary

Section 1 – Name

This section provides that the name of each of the Determinations is the *Biosecurity (First Point of Entry [Port]) Determination 2019* (the Determinations).

Section 2 – Commencement

This section provides for the Determinations to commence on 16 December 2019.

Section 3 – Authority

This section provides that the Determinations are made under subsection 229(1) of the *Biosecurity Act 2015*.

Section 4 – Definitions

This section provides definitions for terms contained in the Determinations. The Determinations provide that “Act” means the *Biosecurity Act 2015*. The Determinations provide that “vessels” means a vessel (as defined in section 9 of the Biosecurity Act) that is subject to biosecurity control. Under sections 191 of the Biosecurity Act vessels become subject to biosecurity control when they enter Australian territory.

“Non-commercial vessel” has the same meaning as in the *Biosecurity Regulation 2016*, which is “a vessel that is used, or is intended to be used, wholly for recreational purposes (whether or not crew are employed on the vessel)”.

The Determinations further provide that “goods” means goods (as defined by section 19 of the Biosecurity Act) that are subject to biosecurity control or in relation to which an exposed goods order is in force.

The following Determinations:

- Port of Darwin Determination
- Port of Fremantle Determination
- Port of Geelong Determination
- Port of Mackay Determination
- Port of Melbourne Determination
- Port of Port Hedland Determination

also contain definitions for “freight container”. These Determinations provide that “freight container” means a re-usable container that is designed to be used to transport goods by one or more modes of transport; that can be transferred from one mode of transport to another without unloading the goods from the container; and that is known as a 20 foot long container or a 40 foot long container.

The following Determinations:

- Port of Albany Determination
- Port of Dampier Determination
- Port of Darwin Determination
- Port of Esperance Determination
- Port of Fremantle Determination
- Port of Geelong Determination
- Port of Mackay Determination
- Port of Melbourne Determination
- Port of Port Hedland Determination
- Port of Sydney Determination

also contain definitions for “general goods”. These Determinations provide that “general goods” means goods (as defined by section 19 of the Biosecurity Act) other than baggage, freight containers, live horses or waste.

The following Determinations:

- Port of Albany Determination
- Port of Dampier Determination
- Port of Darwin Determination
- Port of Esperance Determination
- Port of Fremantle Determination
- Port of Geelong Determination
- Port of Mackay Determination
- Port of Melbourne Determination
- Port of Port Hedland Determination
- Port of Sydney Determination

also contain definitions for “inorganic bulk goods”. These Determinations provide that “inorganic bulk goods” means chemicals, ores, minerals or gases that are brought or imported into Australian territory in bulk and do not contain animals, plants, organic compounds or microbes. The inorganic bulk goods definition should be understood to mean inorganic bulk goods carried on the vessel in bulk, rather than inorganic goods carried on a vessel in bags, containers or other receptacles.

The following Determinations:

- Port of Albany Determination
- Port of Coffs Harbour
- Port of Dampier Determination
- Port of Darwin Determination
- Port of Esperance Determination
- Port of Fremantle Determination
- Port of Geelong Determination
- Port of Mackay Determination
- Port of Melbourne Determination

- Port of Port Hedland Determination
- Port of Sydney Determination

also contain definitions for “waste”. These Determinations provide that “waste” means goods (as defined by section 19 of the Biosecurity Act) that are subject to biosecurity control and that are intended, by the person in charge of the vessels on which the goods are carried, to be disposed of.

The following Determinations:

- Port of Coffs Harbour
- Port of Darwin
- Port of Fremantle Determination
- Port of Mackay Determination
- Port of Melbourne Determination
- Port of Sydney Determination

also contain definitions for “non-commercial vessel waste” which means waste carried on a non-commercial vessel.

The following Determinations:

- Port of Coffs Harbour
- Port of Darwin
- Port of Fremantle Determination
- Port of Mackay Determination
- Port of Melbourne
- Port of Sydney Determination

also contain definitions for “non-commercial vessel baggage” which means baggage carried on a non-commercial vessel.

The following Determinations:

- Port of Darwin Determination
- Port of Fremantle Determination
- Port of Melbourne Determination
- Port of Sydney Determination

also contain definitions for “passenger vessel baggage” which means baggage carried on a passenger vessel.

Part 2 First point of entry

Section 5 - First point of entry – vessels

Section 5 of all of the Determinations, provides that the relevant port is a first point of entry for either vessels generally or specified classes of vessels.

Section 5 of the following Determinations provides that the relevant port is a first point of entry for vessels generally:

- Port of Fremantle Determination
- Port of Mackay Determination
- Port of Sydney Determination

Section 5 of the following Determinations provides that the relevant port is a first point of entry for vessels other than non-commercial vessels:

- Port of Albany Determination
- Port of Dampier Determination
- Port of Darwin Determination
- Port of Eden Determination
- Port of Esperance Determination
- Port of Geelong Determination
- Port of Melbourne Determination
- Port of Port Hedland Determination

The Port of Coffs Harbour Determination provides that the port is a first point of entry for non-commercial vessels only. A note after section 5 of this Determination provides that the port of Coffs Harbour is not a first point of entry for any other vessels.

Section 6 - First point of entry – goods

Section 6 of the Determinations provides whether a specified port is a first point of entry for goods (if any) and if so, the specified class of goods for which the relevant port is a first point of entry. For example, a specified port may be a first point of entry for all goods, no goods, or specified classes of goods.

Section 6 of the Port of Albany Determination, section 6 of the Port of Esperance Determination and section 6 of the Port of Dampier Determination provide that the Port of Albany, the Port of Esperance and Port of Dampier, respectively, are a first point of entry for the following:

- baggage carried on a vessel other than a non-commercial vessel or a passenger vessel
- inorganic bulk goods
- general goods
- waste.

Section 6 of the Port of Coffs Harbour Determination provides that the port is only a first point of entry for non-commercial vessel baggage and non-commercial vessel waste.

Section 6 of the Port of Eden Determination provides that the port is a first point of entry for baggage carried on a vessel other than a non-commercial vessel or a passenger vessel.

Section 6 of the Port of Geelong Determination and section 6 of the Port of Port Hedland Determination provide that the Port of Geelong and the Port of Port Hedland are each a first point of entry for the following:

- baggage carried on a vessel other than a non-commercial vessel or a passenger vessel
- freight containers
- general goods
- inorganic bulk goods
- waste.

Section 6 of the Port of Mackay Determination provides that the Port of Mackay is a first point of entry for the following

- baggage carried on a vessel other than a passenger vessel
- freight containers
- general goods
- inorganic bulk goods
- waste.

Notes after section 6 for each of these Determinations provide that the port is not a first point of entry for any other goods and that for other matters relating to whether particular goods may be brought into a particular first point of entry, readers are directed to sections 173 and 174 of the Biosecurity Act (which deal with prohibited goods and conditionally non prohibited goods) and any determinations made under those sections.

Section 6 of the Port of Darwin Determination and section 6 of the Port of Melbourne Determination provide that the Port of Darwin and the Port of Melbourne are each a first point of entry for goods other than the following:

- live horses
- non-commercial vessel baggage
- non-commercial vessel waste.

Section 6 of the Port of Fremantle Determination provides that the port is a first point of entry for goods other than live horses.

Section 6 of the Port of Sydney Determination provides that the port is a first point of entry for goods other than freight containers and live horses.

A note after section 6 of each of these Determinations provide for other matters relating to whether particular goods may be brought into a particular first point of entry, readers are directed to sections 173 and 174 of the Biosecurity Act (which deal with prohibited goods and conditionally non prohibited goods) and any determinations made under those sections.

Where a Determination provides that a port is a first point of entry for passenger vessels but not passenger vessel baggage, this means in practice that passenger vessels may moor there and day-tripping passengers may alight but passenger baggage must not be unloaded at the first point of entry.

Part 3 Biosecurity entry points

A biosecurity entry point is a specified area within a first point of entry, where vessels or goods to which the biosecurity entry point relates must enter as soon as possible. This is an

optional tool that can be used to assist with the management of biosecurity risk by ensuring vessels and goods are brought to a specified place within the first point of entry with the facilities to assess and, if necessary, treat biosecurity risk. They may be used for a range of reasons, such as the size and location of the port or the types of biosecurity risk associated with the vessels or goods.

For example, a Director may determine under section 229 of the Biosecurity Act that a port is a first point of entry that can accept freight containers, but may also determine that the biosecurity risk associated with freight containers needs to be managed at a specific location within the port (such as a location with the appropriate facilities to inspect, assess and treat biosecurity risk associated with freight containers). Section 230 of the Biosecurity Act enables the Director, when making a determination under subsection 229(1) of the Biosecurity Act in relation to a port, to designate that location within the port to be a biosecurity entry point for freight containers.

Section 147 of the Biosecurity Act relevantly provides that, unless limited exceptions apply, where a biosecurity entry point has been designated for goods, the person in charge of the vessels must ensure that the goods that are to be unloaded from the vessels are brought to the biosecurity entry point for those goods as soon as practicable. Section 246 of the Act provides that if a vessel that is subject to biosecurity control has been moored at a first point of entry for the vessel and a biosecurity entry point has been designated for vessels at the first point of entry, the relevant vessels must be brought to that biosecurity entry point as soon as practicable. It is an offence not to comply with the requirements of section 147 and 246 of the Biosecurity Act.

Section 7 – Biosecurity entry points – vessels

Section 7 of Part 3 of each of the Determinations designates particular areas within the first point of entry as biosecurity entry points for all vessels, or specified classes of vessels. Biosecurity entry points are designated for all vessels at all ports that are first points of entry for those vessels.

Section 7 of Part 3 of each of the Determinations contains a table, which lists the classes of vessel in column 1 and the area, or areas, within the relevant port as the biosecurity entry points for those vessels in column 2.

For example, in the Port of Mackay Determination:

Item 1 lists Mackay Marina as the only biosecurity entry point for non-commercial vessels.

Item 2 lists M1 as a biosecurity entry point for vessels other than non-commercial vessels.

Item 3 lists M3, M4 and M5 as the biosecurity entry points for vessels other than non-commercial vessels and passenger vessels.

A note after the table provides that a vessel that has arrived at the Port of Mackay must be brought to a biosecurity entry point for the vessel at that port as soon as practicable (and directs the reader to section 246 of the Biosecurity Act).

Section 8 - Biosecurity entry points – goods

For example, in the Port of Albany Determination:

Item 1 of the table to section 8 of that Determination lists Berth 1, Berth 2, Berth 3 and Berth 6 as the biosecurity entry points for baggage carried on a vessel other than a non-commercial vessel or a passenger vessel, and waste.

Item 2 of the table to section 8 of that Determination lists Berth 1, Berth 2 and Berth 3 as the biosecurity entry point for inorganic bulk goods and general goods.

The note to section 8 of each of the Determinations provides that if a vessel has arrived at the relevant port and is carrying goods that are to be unloaded from the vessel, those goods must be brought to a biosecurity entry point for those goods as soon as practicable (section 147 of the Biosecurity Act).

Part 4 – Conditions

Section 9 – Conditions – notifying the Agriculture Department of changes

Section 9 of each of the Determinations sets out conditions which relate to notifying the Department of certain changes. These conditions must be met by the owners or lessees of the port, or by a person or body that is responsible for carrying out operations at the port.

For all the Determinations:

Subsection 9(1) provides that the determination of the relevant port as a first point of entry is subject to the conditions in section 9.

Subsection 9(2) provides that owner or owners of the relevant port must provide notice in writing to the Department of a change to the business entity operating the port or a biosecurity entry point at the port as soon as practicable after becoming aware that the change has occurred or will occur.

Subsection 9(3) provides that the lessee (if any) or lessees must provide notice in writing to the Department of a change to the business entity operating the port or a biosecurity entry point at the port as soon as practicable after becoming aware that the change has occurred or will occur.

Subsection 9(4) provides that if a person or body that is responsible for carrying out operations at the relevant port proposes to make a change referred to in subsection 9(5), described below, the person or body must, in writing, give the Department reasonable notice of the proposed change.

Subsection 9(5) sets out the changes for the purposes of subsection 9(4). These are:

- a change to procedures at the port providing for biosecurity measures to be taken to manage the level of biosecurity risk associated with operations carried out at the port (paragraph 9(5)(a));
- a change to the facilities or amenities available at the port for biosecurity officials and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act at that port (paragraph 9(5)(b));
- a change to the procedures at the port that may affect the ability of a person who carries out operations at the port to identify associated biosecurity risks (paragraph 9(5)(c));
- a change to procedures at the port that may affect the ability for biosecurity officials or human biosecurity officials to be informed of biosecurity risks associated with operations at that port (paragraph 9(5)(d));
- a change to procedures at the port for managing any other factors that may contribute to, or affect, the level of biosecurity risk associated with operations carried out at that port (paragraph 9(5)(e)).