**Explanatory Statement**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

*Biosecurity (First Point of Entry—Coral Sea Marina, Airlie Beach) Determination 2020*

**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 of the Biosecurity Act 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) of the Biosecurity Act 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 purposes of the *Biosecurity (First Point of Entry—Coral Sea Marina, Airlie Beach) Determination 2020* (the Determination) are to:

* determine that Coral Sea Marina, Airlie Beach is a first point of entry for non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste for the purposes of section 229 of the Biosecurity Act;
* designate specified areas of Coral Sea Marina, Airlie Beach as biosecurity entry points for non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste for the purposes of section 230 of the Biosecurity Act where required; and
* identify the conditions that the Determination is subject to in accordance with section 231 of the Biosecurity Act, including the condition concerning conducting mosquito monitoring activities.

**Background**

The operator of Coral Sea Marina, Airlie Beach requested determination as a first point of entry under section 229 of the Biosecurity Act. The Determination relates to the arrival of non-commercial vessels and the unloading of baggage and waste carried on a non-commercial vessel.

For the purposes of the Determination, the Director of Biosecurity was satisfied that Coral Sea Marina, Airlie Beach met the requirements of subsection 229(2) of the Biosecurity Act. The Director of Biosecurity specified that Coral Sea Marina, Airlie Beach was to be a first point of entry for the purposes of subsection 229(1) of the Biosecurity Act.

**Impact and Effect**

The Determination makes Coral Sea Marina, Airlie Beach a first point of entry for non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste. The Determination ensures that vessels and goods that arrive at Coral Sea Marina, Airlie Beach 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.

**Consultation**

In considering whether Coral Sea Marina, Airlie Beach met the requirements of subsection 229(2) of the Biosecurity Act, the Department of Agriculture, Water and the Environment (the Department) engaged directly with the operator of Coral Sea Marina between December 2019 and May 2020. The Department conducted onsite visits, exchanged correspondence and undertook ongoing communication with the operator 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 from the first point of entry operator, as well as clarification of the activities carried out at the location. This has informed the decision that Coral Sea Marina, Airlie Beach be determined as a first point of entry for non-commercial vessels, and a first point of entry for non-commercial vessel baggage and non-commercial vessel waste. It has also informed the decision that L-Arm, Coral Sea Marina be designated as the biosecurity entry point for non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste.

Further, the Department conducted onsite assessments, meetings and training at Coral Sea Marina, Airlie Beach regarding mosquito monitoring activities appropriate to manage the biosecurity risk (relating to mosquitoes) associated with operations carried out at Coral Sea Marina, Airlie Beach to an acceptable level. The consultation and assessments undertaken have informed the decision to include conditions requiring the conducting of mosquito monitoring activities by the owners, or lessees (if any), of Coral Sea Marina, Airlie Beach in the Determination.

The Department of Health has been consulted in relation to the Determination and a representative of the Director of Human Biosecurity provided a letter of endorsement on 9 June 2020.

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 Determination are set out in the Attachment.

**Other**

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. However, under section 234 of the Biosecurity Act, it is not subject to disallowance. As such, a Statement of Compatibility with Human Rights is not required (subsection 15J(2) of the *Legislation Act 2003* refers). The decision to make a determination under subsection 229(1) of the Biosecurity Act is a technical and scientific decision to ensure biosecurity risk associated with non-commercial vessels and non-commercial vessel baggage and non-commercial vessel waste can be satisfactorily managed at Coral Sea Marina, Airlie Beach.

**ATTACHMENT**

**Details of the Biosecurity (First Point of Entry – Coral Sea Marina, Airlie Beach) Determination 2020**

Part 1 - Preliminary

**Section 1 – Name**

This section provides that the name of the Determination is the *Biosecurity (First Point of Entry—Coral Sea Marina, Airlie Beach) Determination 2020* (the Determination)*.*

**Section 2 – Commencement**

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

**Section 3 – Authority**

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

**Section 4 – Definitions**

This section provides definitions for terms contained in the Determination. The Determination provides that “Act” means the *Biosecurity Act 2015*.

The note provides that a number of expressions used in this instrument are defined in section 9 of the Act. This note clarifies that the expressions used in the instrument are the same as those in the Biosecurity Act.

The Determination provides 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. Under section 119 of the Biosecurity Act, goods 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 Determination contains a definition for “non-commercial vessel baggage” which means baggage carried on a non-commercial vessel. The Determination also provides that “Non-commercial vessel waste” means waste carried on a non-commercial vessel.

The Determination provides that “vessel” means a vessel (as defined in section 9 of the Biosecurity Act) that is subject to biosecurity control. Under section 191 of the Biosecurity Act, vessels become subject to biosecurity control when they enter Australian territory.

The Determination provides 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.

Part 2 - First point of entry

**Section 5 - First point of entry – vessels**

Section 5 the Determination provides that Coral Sea Marina, Airlie Beach is a first point of entry for non-commercial vessels. A note after section 5 provides that Coral Sea Marina, Airlie Beach is not a first point of entry for any other vessels.

**Section 6 - First point of entry – goods**

Section 6 of the Determination provides that Coral Sea Marina, Airlie Beach is a first point of entry for non-commercial vessel baggage and non-commercial vessel waste.

Note 1 after section 6 of the Determination provides that Coral Sea Marina, Airlie Beach is not a first point of entry for any other goods. Note 2 directs readers 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, for other matters relating to whether particular goods may be brought into a particular 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.

Section 230 of the Biosecurity Act relevantly 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 particular classes of vessels or goods.

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 vessel must ensure that the goods that are to be unloaded from the vessel 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 vessel at the first point of entry, the relevant vessel must be brought to that biosecurity entry point as soon as practicable. Civil penalty provisions and fault-based offences apply for failure to comply with the requirements of sections 147 and 246 of the Biosecurity Act.

 **Section 7 – Biosecurity entry points – vessels**

Section 7 of the Determination contains a table, which lists the classes of vessel in column 1 and the area, or areas, within the first point of entry that are biosecurity entry points for those vessels in column 2.

Item 1 of the table designates L-Arm, Coral Sea Marina within the first point of entry as a biosecurity entry point for non-commercial vessels.

A note after the table provides that a vessel that has arrived at Coral Sea Marina, Airlie Beach must be brought to a biosecurity entry point for the vessel at Coral Sea Marina, Airlie Beach as soon as practicable (and directs the reader to section 246 of the Biosecurity Act).

**Section 8 - Biosecurity entry points – goods**

Section 8 of the Determination contains a table, which lists the classes of goods in column 1 and the area, or areas, within the first point of entry that are biosecurity entry points for those classes of goods in column 2.

Item 1 of the table designates L-Arm, Coral Sea Marina within the first point of entry as a biosecurity entry point for non-commercial vessel baggage and non-commercial vessel waste.

The note after the table provides that if a vessel has arrived at the first point of entry 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**

Section 9 provides that the determination of Coral Sea Marina, Airlie Beach as a first point of entry is subject to the conditions in Part 4.

**Section 10 – Notifying the Agriculture Department of changes**

Section 10 of the Determination sets out conditions which relate to notifying the Department of certain changes. These conditions must be met by the owners or lessees of Coral Sea Marina, Airlie Beach, or by a person or body that is responsible for carrying out operations at Coral Sea Marina, Airlie Beach.

Subsection 10(1) provides that owner or owners of Coral Sea Marina, Airlie Beach must provide notice in writing to the Department of a change to the business entity operating Coral Sea Marina, Airlie Beach or a biosecurity entry point at Coral Sea Marina, Airlie Beach as soon as practicable after becoming aware that the change has occurred or will occur.

Subsection 10(2) provides that the lessee (if any) or lessees must provide notice in writing to the Department of a change to the business entity operating Coral Sea Marina, Airlie Beach or a biosecurity entry point at Coral Sea Marina, Airlie Beach as soon as practicable after becoming aware that the change has occurred or will occur.

Subsection 10(3) provides that if a person or body that is responsible for carrying out operations at Coral Sea Marina, Airlie Beach proposes to make a change referred to in subsection 10(4), described below, the person or body must, in writing, give the Department reasonable notice of the proposed change.

Subsection 10(4) sets out the changes for the purposes of subsection 10(3). These are:

* a change to procedures Coral Sea Marina, Airlie Beach providing for biosecurity measures to be taken to manage the level of biosecurity risk associated with operations carried out at Coral Sea Marina, Airlie Beach (paragraph 10(4)(a)):
* a change to the facilities or amenities available at Coral Sea Marina, Airlie Beach for biosecurity officials and human biosecurity officers to perform functions or exercise powers under the Act at Coral Sea Marina, Airlie Beach (paragraph 10(4)(b));
* a change to the procedures at Coral Sea Marina, Airlie Beach that may affect the ability of a person who carries out operations at Coral Sea Marina, Airlie Beach to identify associated biosecurity risks (paragraph 10(4)(c)):
* a change to procedures at Coral Sea Marina, Airlie Beach that may affect the ability for biosecurity officials or human biosecurity officials to be informed of any identified biosecurity risks associated with operations at Coral Sea Marina, Airlie Beach (paragraph 10(4)(d)):
* a change to procedures at Coral Sea Marina, Airlie Beach for managing any other factors that may contribute to, or affect, the level of biosecurity risk associated with operations carried out at Coral Sea Marina, Airlie Beach (paragraph 10(4)(e)).

**Section 11 – Conducting mosquito monitoring activities**

Section 11 of the Determination sets out conditions which relate to conducting mosquito monitoring activities at Coral Sea Marina, Airlie Beach. These conditions must be met by the owners or lessees of Coral Sea Marina, Airlie Beach.

Subsection 11(1) provides that the owners, or lessees (if any), of Coral Sea Marina, Airlie Beach must ensure that mosquito monitoring activities are carried out.

Subsection 11(2) provides that the mosquito monitoring activities must be activities that the Director of Biosecurity is satisfied are appropriate to manage the biosecurity risks (relating to mosquitoes) associated with operations carried out at Coral Sea Marina, Airlie Beach to an acceptable level.