

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Port of Port Adelaide) Determination 2021

Legislative Authority

The *Biosecurity (First Point of Entry—Port of Port Adelaide) Determination 2021* (the Determination) is made under section 229 of the *Biosecurity Act 2015* (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.

Subsection 230(1) 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 Port Adelaide) Determination 2021* (the Determination) is to:

- determine that a specified port, being the Port of Port Adelaide, is a first point of entry for vessels other than non-commercial vessels and for goods other than live horses, non-commercial vessel baggage and non-commercial vessel waste for the purposes of section 229 of the Biosecurity Act;
- designate specified areas of the Port of Port Adelaide as biosecurity entry points for the purposes of section 230 of the Biosecurity Act where required;

- identify the conditions that the Determination is subject to in accordance with section 231 of the Biosecurity Act.

Background

The 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 in section 9 of the Biosecurity Act.

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 Port of Port Adelaide was extended for twenty-four months, ending on 15 June 2021. The extension reflected the anticipated time needed for the port to be fully compliant with the necessary requirements for making determinations under section 229 of the Biosecurity Act.

For the purposes of the Determination, the Director of Biosecurity was satisfied that the Port of Port Adelaide (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 the Port of Port Adelaide was to be first points of entry for the purposes of subsection 229(1) of the Biosecurity Act.

Impact and Effect

The Determination:

- Determines that the Port of Port Adelaide is a first point of entry for vessels other than non-commercial vessels and for goods other than live horses, non-commercial vessel baggage and non-commercial vessel waste.
- Designates specified areas of the Port of Port Adelaide as biosecurity entry points for vessels other than non-commercial vessels, and as biosecurity entry points for vessels other than non-commercial vessels and passenger vessels. Under section 246 of the Biosecurity Act, a vessel that has arrived at the Port of Port Adelaide must be brought to a biosecurity entry point for the vessel at that port as soon as practicable.
- Designates specified areas of the Port of Port Adelaide as biosecurity entry points for: baggage other than non-commercial vessel baggage or passenger vessel baggage,

freight containers, general goods, inorganic bulk goods, passenger vessel baggage, and waste. Under section 147 of the Biosecurity Act, if a vessel has arrived at the Port of Port Adelaide 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.

- Identifies that the Determination is subject to conditions regarding notifying the Agriculture Department of certain changes at the Port of Port Adelaide, in accordance with section 231 of the Biosecurity Act.

The Determination ensures 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, establish or spread and cause harm to Australia's human, plant and animal health, the environment and the economy.

Consultation

In considering whether the Port of Port Adelaide met the requirements of section 229 of the Biosecurity Act, the Department of Agriculture, Water and the Environment (the Department) engaged directly with operators at Port of Port Adelaide 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 the port and biosecurity entry points. This has informed the decision that Port of Port Adelaide is a first point of entry for vessels other than non-commercial vessels and for goods other than live horses, non-commercial vessel baggage and non-commercial vessel waste. It has also informed the decisions about the areas of the Port of Port Adelaide have been designated as biosecurity entry points for certain classes of vessels and goods at the port.

The Department of Health has also been consulted in relation to the Determination. A delegate of the Director of Human Biosecurity provided a letter of endorsement on 27 May 2021.

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

Section 234 of the Biosecurity Act provides that the Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act) and the instrument is not subject to disallowance. As such, a Statement of Compatibility with Human Rights is not required (subsection 15J(2) of the Legislation Act refers).

Details of the Biosecurity (First Point of Entry—Port of Port Adelaide Determination

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (First Point of Entry—Port of Port Adelaide) Determination 2021* (the Determination).

Section 2 – Commencement

This section provides for the Determination to commence on 16 June 2021.

Section 3 – Authority

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

Section 4 – Definitions

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

The Determination provides 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 definition of ‘freight container’ applies to both empty freight containers and freight containers carrying goods.

The Determination provides that “general goods” means goods (as defined by section 19 of the Biosecurity Act) other than baggage, freight containers, live horses or waste.

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.

The Determination provides 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 Determination provides that “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 provides that “non-commercial vessel baggage” means baggage carried on a non-commercial vessel.

The Determination provides that “passenger vessel baggage” means baggage carried on a passenger vessel.

The Determination provide 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 also 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 of the Determination provides that the Port of Port Adelaide is a first point of entry for vessels other than non-commercial vessels.

Section 6 - First point of entry – goods

Section 6 of the Determination provides that the Port of Port Adelaide is a first point of entry for goods other than live horses, non-commercial vessel baggage and non-commercial vessel waste.

The note after section 6 directs the reader 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 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 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 to be 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 assess and treat biosecurity risk, such as a certified container stand). Section 230 of the Biosecurity Act enables the Director to designate that location to be a biosecurity entry point for freight containers.

Section 147 of the Biosecurity Act 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 vessels are brought to the biosecurity entry point for those goods as soon as practicable. Section 238 of the Act provides that where a biosecurity entry point has been designated for vessels at a 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 238 of the Biosecurity Act.

Section 7 - Biosecurity entry points – vessels

Section 7 of the Determination designates particular areas within the first point of entry as biosecurity entry points for specified vessels. Biosecurity entry points are designated for all vessels at all ports that are first points of entry for those vessels.

Section 7 in the Determination contains a table, which lists the vessel class in column 1 and the area, or areas, which are the biosecurity entry point for those vessels in column 2.

Item 1 lists the following areas as biosecurity entry points for vessels other than non-commercial vessels:

- Inner Harbour 18;
- Inner Harbour 19;
- Inner Harbour 20;
- Inner Harbour 25;
- Inner Harbour 27;
- Inner Harbour 29;
- H Berth;
- K Berth;
- M Berth;
- N Berth;
- Outer Harbor 1;
- Outer Harbor 2;
- Outer Harbor 3;
- Outer Harbor 4;
- Outer Harbor 6;
- Outer Harbor 7;
- Outer Harbor 8;
- Osborne 1

Item 2 lists Osborne Naval Shipyard, Common User Facility as a biosecurity entry point for vessels other than non-commercial vessels and passenger vessels.

The note after the table in section 7 provides that a vessel that has arrived at the Port of Port Adelaide must be brought to a biosecurity entry point for the vessel at that port as soon as practicable and refers the reader to section 246 of the Biosecurity Act.

Section 8 - Biosecurity entry points – goods

Section 8 of the Determination designates particular areas within the first point of entry as biosecurity entry points for specified goods.

Section 8 contains a table, which lists the class of goods in column 1 and the areas, or areas, that are the biosecurity entry points for those goods in column 2.

Item 1 lists the following areas as biosecurity entry points for baggage other than non-commercial vessel baggage or passenger vessel baggage, and for waste:

- Inner Harbour 18;
- Inner Harbour 19;
- Inner Harbour 20;
- Inner Harbour 25;
- Inner Harbour 27;
- Inner Harbour 29;
- H Berth;
- K Berth;
- M Berth;
- N Berth;
- Outer Harbor 1;
- Outer Harbor 2;
- Outer Harbor 3;
- Outer Harbor 4;
- Outer Harbor 6;
- Outer Harbor 7;
- Outer Harbor 8;
- Osborne 1
- Osborne Naval Shipyard, Common User Facility

Item 2 lists the following areas as biosecurity entry points for freight containers and for general goods:

- Inner Harbour 18;
- Inner Harbour 19;
- Inner Harbour 20;
- Outer Harbor 1;
- Outer Harbor 2;
- Outer Harbor 3;
- Outer Harbor 4;
- Outer Harbor 6;
- Outer Harbor 7;
- Osborne 1

Item 3 lists the following areas as biosecurity entry points for inorganic bulk goods:

- Inner Harbour 18;
- Inner Harbour 19;
- Inner Harbour 20;
- Inner Harbour 25;
- Inner Harbour 27;
- Inner Harbour 29;
- H Berth;
- K Berth;

- M Berth;
- N Berth;
- Outer Harbor 1;
- Outer Harbor 2;
- Outer Harbor 3;
- Outer Harbor 4;
- Outer Harbor 6;
- Outer Harbor 7;
- Outer Harbor 8;
- Osborne 1

Item 4 lists Port Adelaide Passenger Terminal (Outer Harbor 1-4) as a biosecurity entry point for passenger vessel baggage.

The note after the table in section 8 provides that goods listed in the table to be unloaded from a vessel that has arrived at the port must be brought to a biosecurity entry point for those goods as soon as practicable and directs the reader to section 147 of the Biosecurity Act.

Part 4 – Conditions

Section 9 – Conditions – notifying the Agriculture Department of changes

Section 9 in the Determination provides conditions which relate to notifying the department of certain changes. These conditions must be met by the owners or lessees of the Port of Port Adelaide, or by a person or body that is responsible for carrying out operations at the Port of Port Adelaide.

Subsection 9(1) of the Determination provides that the determination of the Port of Port Adelaide as a first point of entry is subject to the conditions in this section.

Subsection 9(2) provides that owner (or, if there is more than one owner, an owner) of the Port of Port Adelaide 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) of the Determination provides that the lessee (if any, or, if there is more than one lessee, a lessee) of the Port of Port Adelaide 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 of the change.

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

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

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