

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) Instrument 2021

Legislative Authority

The *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021* (Extension Instrument) is made under the subitem 1(4) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Biosecurity Transitional Provisions Act).

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

Subitem 1(4) of Schedule 3 to the Biosecurity Transitional Provisions 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 Extension Instrument is to extend the transition period for the following landing places and ports:

- Kingsford-Smith Airport, Sydney,
- Norfolk Island Airport,
- Port of Ball Bay, Norfolk Island,
- Port of Cascade Bay, Norfolk Island,
- Port of Christmas Island,
- Port of Cocos (Keeling) Islands,
- Port of Sydney Bay (Kingston), Norfolk Island.

The Extension Instrument also repeals two instruments that varied the period of effect for first point of entry determinations for the landing places and ports listed above, as well as for other landing places and ports. The Extension Instrument also provides that the repealed instruments continue to apply to select first points of entry as if they had not been repealed.

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.

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 or port is acceptable.

Item (1) of Schedule 3 to the Biosecurity Transitional Provisions Act provides that despite subsections 223(2) and 229(2) of the Biosecurity Act, the Director may make a determination under subsection 223(1) or 229(1) of 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(1) 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 under Item (1) of Schedule 3 to the Biosecurity Transitional Provisions 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 Provisions 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 Provisions Act provides that the transition period is three years starting from when the Biosecurity Act commenced. The transition period ceased on 15 June 2019.

New determinations commenced on 16 June 2019 for those first points of entry for which the Director was satisfied that regulatory requirements were met, and the level of biosecurity risk associated with operations carried out at the landing place or port was acceptable. However, 8 landing places and 20 ports were unable to meet regulatory requirements before the end of the transition period. The transition period for these landing places and ports was extended for periods of between 6 and 24 months depending on the type and complexity of remedial action required to achieve compliance with regulatory requirements.

The instruments that varied the transitional period for these landing places and ports are the:

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

Impact and Effect

The Extension Instrument enables 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 Biosecurity Transitional Provisions Act. The Extension Instrument extends the transitional period for each landing place or port for a specified period of time. The time period for each landing place or port reflects 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 section 223 and 229 of the Biosecurity Act.

The Extension Instrument also repeals the two instruments that varied the period of effect for first point of entry determinations for landing places and ports that were unable to meet regulatory requirements before the end of the transition period on 15 June 2019.

The Extension Instrument provides that the repealed instruments continue to apply to the following first points of entry:

- Alice Springs Airport;
- Christmas Island International Airport;
- Cocos (Keeling) Islands Airport;
- the Port of Port Adelaide; and
- the Port of Derby.

The above landing places and ports will either have a new determination commence on 16 June 2021 or have no new determination made. If no new determination is made the landing place or port will no longer be a first point of entry from 16 June 2021.

The repealed instruments no longer apply to the following first points of entry. Instead, the transition period for these first points of entry is varied by the Extension Instrument:

- Kingsford-Smith Airport, Sydney,
- Norfolk Island Airport,
- Port of Ball Bay, Norfolk Island,
- Port of Cascade Bay, Norfolk Island,
- Port of Christmas Island,
- Port of Cocos (Keeling) Islands,
- Port of Sydney Bay (Kingston), Norfolk Island.

Consultation

In considering whether the landing places or ports met the requirements to make first point of entry determinations under the Biosecurity Act, or whether to extend the transition period for the landing place or port, the Department of Agriculture, Water and the Environment (department) engaged directly with operators at landing places and ports 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 specified in the Extension Instrument 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 of 15 June 2021.

The Department of Health has also been consulted in relation to the Extension Instrument. A delegate of the Director of Human Biosecurity provided a letter of endorsement.

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 Extension Instruments on 30 May 2019.

Details / Operation

Details of the Extension Instrument are set out in the [Attachment](#).

Other

The Extension Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. However, under subitem 1(5) of Schedule 3 to the Biosecurity Transitional Provisions 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 refers).

Details of the Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021

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 2021* (the Extension Instrument).

Section 2 – Commencement

This section provides for the Extension Instrument to commence the day after the instrument is registered.

Section 3 – Authority

This section provides that the Extension Instrument is made under subitem 1(4) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Biosecurity Transitional Provisions Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Extension Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Extension Instrument has effect according to its terms.

Section 5 – Extension of transition period for certain landing places

This section contains a table in which Column 1 lists the names of landing places and Column 2 lists the new transition period end day for that landing place.

Item 1 of the table lists Kingsford Smith Airport, Sydney in Column 1 and lists the transition period end day as 15 June 2022.

Item 2 lists Norfolk Island Airport in Column 1 and lists the transition period end day as 15 March 2022.

Section 6 – Extension of transition period for certain ports

This section contains a table in which Column 1 lists the names of ports and Column 2 lists the new transition period end day for that port.

Item 1 of the table lists Port of Ball Bay, Norfolk Island in Column 1 and lists the transition period end day as 15 March 2022.

Item 2 lists Port of Cascade Bay, Norfolk Island in Column 1 and lists the transition period end day as 15 March 2022.

Item 3 lists Port of Christmas Island in Column 1 and lists the transition period end day as 15 March 2022.

Item 4 lists Port of Cocos (Keeling) Islands in Column 1 and lists the transition period end day as 15 June 2022.

Item 5 lists Port of Sydney Bay (Kingston), Norfolk Island in Column 1 and lists the transition period end day as 15 March 2022.

Section 7 – Savings—old law

This section provides that despite the repeal of the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2019* and the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument (No. 2) 2019* by Schedule 1 to the Extension Instrument, those instruments continue to apply in relation to the following landing places and ports as if that repeal had not happened:

- Alice Springs Airport;
- Christmas Island International Airport;
- Cocos (Keeling) Islands Airport;
- the Port of Port Adelaide; and
- the Port of Derby.

The effect of this section is that the transition period for the determinations for the above landing places and ports will lapse on 15 June 2021. The above landing places and ports will either have a new determination commence on 16 June 2021, or have no new determination made. If no new determination is made, the landing place or port will no longer be a first point of entry from 16 June 2021.

Schedule 1 – Repeals

The Schedule sets out instruments to be repealed.

Item 1 repeals the whole of the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2019*.

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

These instruments extended the transition period for select landing places and ports. These instruments are no longer required as the landing places and ports specified in these instruments have either:

- had the relevant transition period extended by the Extension Instrument; or
- demonstrated full compliance with regulatory requirements, with a new first point of entry determination made, or to be made, for the landing place or port; or
- had, or will have, the relevant first point of entry determination lapse, with no new determination made (and therefore cease to be first points of entry).