

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

*Biosecurity (First Points of Entry Determinations) Amendment (Periods of Effect)
Determination 2021*

Legislative Authority

The *Biosecurity (First Points of Entry Determinations) Amendment (Periods of Effect) Determination 2021* (Amendment Instrument) is made under subsections 226(2) and 232(2) of the *Biosecurity Act 2015* (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 under subsection (1) 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.

Subsections 226(1) and 232(1) of the Biosecurity Act provide, respectively, that a determination made under subsection 223(1) and 229(1) in relation to a landing place or in relation to a port may be expressed to have effect for a specified period of time. Subsections 226(2) and 232(2) of the Biosecurity Act provide, respectively, that the Director who made the determination may vary the determination to extend or shorten the period of effect.

Section 227 and section 233 of the Biosecurity Act provide, respectively, that if a determination is made under subsection 223(1) and 229(1) in relation to a landing place or in relation to a port, the Director who made the determination may vary the determination if the Director is satisfied of any of the matters set out in paragraphs 227(a) – (e) and 233(a) – (e) of the Biosecurity Act. Paragraphs 227(e) and 233(e) provide that one of these matters is that a circumstance prescribed by regulation has occurred. Paragraph 57(c) of the *Biosecurity Regulation 2016* relevantly provides that a circumstance in which the Director may vary a determination made under subsection 223(1) of the Biosecurity Act in relation to a landing place is that the operator of the landing place has requested the variation of the determination. Paragraph 59(c) relevantly provides that one of the circumstances in which the Director may vary a determination made under subsection 229(1) of the Biosecurity Act in relation to a port is that the operator of the port has requested the variation.

Purpose

The purpose of the Amendment Instrument is to extend the period of effect of the following First Point of Entry Determinations:

- *Biosecurity (First Point of Entry—Kingsford Smith Airport, Sydney) Determination 2016* (Kingsford Smith Airport, Sydney Determination),
- *Biosecurity (First Point of Entry—Norfolk Island Airport) Determination 2016* (Norfolk Island Airport Determination),
- *Biosecurity (First Point of Entry—Port of Ball Bay, Norfolk Island) Determination 2016* (Port of Ball Bay Determination),
- *Biosecurity (First Point of Entry—Port of Cascade Bay, Norfolk Island) Determination 2016* (Port of Cascade Bay Determination),
- *Biosecurity (First Point of Entry—Port of Christmas Island) Determination 2016* (Port of Christmas Island Determination),
- *Biosecurity (First Point of Entry—Port of Cocos (Keeling) Islands) Determination 2016* (Port of Cocos (Keeling) Islands Determination),
- *Biosecurity (First Point of Entry—Port of Sydney Bay (Kingston), Norfolk Island) Determination 2016* (Port of Sydney Bay Determination).

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.

Subitem 1(1) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (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(2) 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 in relation to landing places and ports under subsections 223(1) and 229(1) respectively, as permitted by subitem (1)(1) of Schedule 3 to the Biosecurity Transitional Provisions Act, to allow ports and landing places that facilitate international arrivals of goods, vessels or aircraft time to be fully compliant with the necessary requirements under section 223 and 229 of the Biosecurity Act. The period of effect for these determinations is the ‘transition period’, which is defined in subitem 1(6) of Schedule 3 to the Biosecurity Transitional Provisions Act to be three years after the Biosecurity Act commences. Therefore, these determinations ceased on either 15 June 2019 or 16 June 2019.

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.

When the transition period ceased, 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 at 15 June 2019. 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 the 8 landing places and 20 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*.

The instrument, *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021*, extends the transitional period for a specified period of time 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.

Impact and Effect

The Amendment Instrument extends the period of effect for the following determinations to provide 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 sections 223 and 229 of the Biosecurity Act:

- Kingsford Smith Airport, Sydney Determination
- Norfolk Island Airport Determination

- Port of Ball Bay Determination
- Port of Cascade Bay Determination
- Port of Christmas Island Determination
- Port of Cocos (Keeling) Islands Determination
- Port of Sydney Bay Determination

Consultation

In considering whether the landing places or ports met the necessary requirements to make first point of entry determinations under the Biosecurity Act, or whether to vary the repeal date of the determinations, the Department of Agriculture, Water and the Environment (department) engaged directly with operators at ports and landing places 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 provided in the Amendment Instrument have 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 Amendment 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 Amending Instruments on 30 May 2019.

Details / Operation

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

Other

The Amendment Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*. However, under sections 228 and 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 refers).

Biosecurity (First Points of Entry Determinations) Amendment (Periods of Effect) Determination 2021

Section 1 – Name

This section provides that the instrument is the *Biosecurity (First Points of Entry Determinations) Amendment (Periods of Effect) Determination 2021* (the Amendment Instrument).

Section 2 – Commencement

This section provides for the Amendment Instrument to commence on 15 June 2021.

Section 3 – Authority

This section provides that the Amendment Instrument is made under subsection 226(2) and subsection 232(2) of the *Biosecurity Act 2015*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Amendment 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 Amendment Instrument has effect according to its terms.

Schedule 1 – Amendments

Part 1 - Landing places

This Part sets out amendments made to section 9 in each of the determinations to omit the date “15 June 2021” and substitute a date that is the new date until which each determination will remain in effect.

Biosecurity (First Point of Entry—Kingsford-Smith Airport, Sydney) Determination 2016

1 Section 9

Item 1 amends section 9 of the *Biosecurity (First Point of Entry—Kingsford Smith Airport, Sydney) Determination 2016* to omit “15 June 2021” and substitute “15 June 2022”.

The effect of this amendment is that the period of effect of the determination has been extended to 15 June 2022.

2 Section 9

Item 2 amends section 9 of the *Biosecurity (First Point of Entry—Norfolk Island Airport) Determination 2016* to omit “15 June 2021” and substitute “15 March 2022”.

The effect of this amendment is that the period of effect of the determination has been extended to 15 March 2022.

Part 2 - Ports

This section sets out amendments made to either section 7 or 9 in each of the determinations to omit the date “15 June 2021” and substitute a date that is the new date for which each determination will remain in effect.

3 Section 7

Item 3 amends section 7 of the *Biosecurity (First Point of Entry—Port of Ball Bay, Norfolk Island) Determination 2016* to omit “15 June 2021” and substitute “15 March 2022”.

The effect of this amendment is that the period of effect of the determination has been extended to 15 March 2022.

4 Section 7

Item 4 amends section 7 of the *Biosecurity (First Point of Entry—Port of Cascade Bay, Norfolk Island) Determination 2016* to omit “15 June 2021” and substitute “15 March 2022”.

The effect of this amendment is that the period of effect of the determination has been extended to 15 March 2022.

5 Section 9

Item 5 amends section 9 of the *Biosecurity (First Point of Entry—Port of Christmas Island Determination 2016* to omit “15 June 2021” and substitute “15 March 2022”.

The effect of this amendment is that the period of effect of the determination has been extended to 15 March 2022.

6 Section 7

Item 6 amends section 7 of the *Biosecurity (First Point of Entry—Port of Cocos (Keeling) Islands Determination 2016* to omit “15 June 2021” and substitute “15 June 2022”.

The effect of this amendment is that the period of effect of the determination has been extended to 15 June 2022.

7 Section 7

Item 7 amends section 7 of the *Biosecurity (First Point of Entry—Port of Sydney Bay (Kingston), Norfolk Island) Determination 2016* to omit “15 June 2021” and substitute “15 March 2022”.

The effect of this amendment is that the period of effect of the determination has been extended to 15 March 2022.