

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (Biosecurity Activity Zones) Determination 2021

Legislative Authority

The *Biosecurity Act 2015* (the Act) provides the regulatory framework for the management of diseases and pests that may cause harm to human, animal or plant health, the environment, or the economy.

Subsection 395(1) of the Act provides that the Director of Biosecurity (the Director) may determine that a specified area in Australia is a biosecurity activity zone if:

- the area is a place where powers are exercised or functions or duties are performed by, or on behalf of, the Commonwealth under the Act; and
- the Director is satisfied it is necessary to make the determination for the purpose of managing biosecurity risks associated with the exercise of those powers or the performance of those functions or duties.

Subsection 395(4) of the Act provides that a determination made under subsection 395(1) is a legislative instrument. Subsection 395(5) of the Act provides that a determination is in force until it is revoked under section 398.

Purpose

The purpose of the *Biosecurity (Biosecurity Activity Zones) Determination 2021* (the Determination) is to determine areas as biosecurity activity zones under the Act. Once determined as a biosecurity activity zone, a biosecurity officer may exercise certain powers under the Act in those zones, or in relation to goods and premises in those zones, allowing for greater ability to assess and manage biosecurity risk.

Background

The Department of Agriculture, Water and the Environment (the department) and the Department of Health co-administer the Act, which establishes the framework for biosecurity risk management. The detail and specific information requirements for certain activities under the Act are provided for in the *Biosecurity Regulation 2016* and other delegated legislation, including this Determination.

The *Biosecurity (Biosecurity Activity Zones) Determination 2016* (the 2016 Determination) was made on 24 May 2016 and specifies three areas as biosecurity activity zones. These areas are the department quarantine facility at Mickleham, Victoria; the department quarantine facility at Spotswood, Victoria; and the department quarantine facility at Torrens Island, South Australia. The department has ceased operating quarantine facilities from the Torrens

Island and Spotswood locations and they are no longer locations where powers are exercised or functions or duties are performed by, or on behalf of, the Commonwealth where additional powers are necessary to manage biosecurity risks. Consequently, it is no longer necessary for the areas to be specified to be biosecurity activity zones. Further, approximately 70 hectares of land on which the Mickleham department quarantine facility is situated is not occupied by the department and no longer needs to be specified to be a biosecurity activity zone.

Under section 398 of the Act, the Director must revoke a biosecurity activity zone determination if the Director is satisfied that it is no longer necessary for the powers described in Division 3 of Part 7 of Chapter 6 of the Act (relating to powers that may be exercised in biosecurity activity zones) to be exercised to manage biosecurity risks in, or in relation to, the zone. The 2016 Determination will be revoked separately, but the effect of the commencement provision in the Determination is such that it will not commence until the 2016 Determination has been revoked.

Impact and Effect

The Determination will specify the area known as the Post Entry Quarantine Facility at Mickleham, which is located on part of the land known as 135 Donnybrook Road, Mickleham, Victoria, as a biosecurity activity zone. This will allow biosecurity officers to exercise the powers under Division 3 of Part 7 of Chapter 6 the Act in, or in relation to goods or premises in, the area specified.

Consultation

Consultation with the head (however described) of the State or Territory body that is responsible for the administration of matters relating to biosecurity in each State or Territory in which the biosecurity activity zone will lie, is required by subsection 396(1) of the Act. However under subsection 396(2), a failure to consult does not affect the validity of the determination. The department has corresponded with Agriculture Victoria in relation to the Determination.

Public consultation is not necessary as the Determination relates to the management of Commonwealth premises.

The Office of Best Practice Regulation (OBPR) has advised that the Determination is exempt from the Regulation Impact Statement Preliminary Assessment (RIS) process (OBPR Ref: 21 01212). Accordingly, a RIS has not been conducted for the Determination.

Details/Operation

Details of the Determination are set out in [Attachment A](#).

Other

This Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act). Subsection 395(4) of the Act provides that the Determination is not subject to disallowance. This is because the decision to make a determination under subsection 395(1) of the Act relies on specific technical, operational and scientific knowledge as well as the exercise of judgement by the Director.

The Director may only make a Determination under subsection 395(1), by reference to current detailed knowledge of the activities of the department and their associated biosecurity risks. Specific knowledge of the locations where powers are exercised or functions or duties are performed by, or on behalf of, the Commonwealth under the Act is required. In addition, the Director must make an assessment as to the nature of these activities and functions to determine that they are of a type that necessitate access to additional powers to manage any potential biosecurity risks.

As such, it is appropriate that this Determination is exempt from disallowance due to the nature of the instrument and the circumstances in which it may be made.

As the Determination is exempt from disallowance, a Statement of Compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Determination commences on the later of the day after it is registered as an instrument, and the day and time the *Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021* commences. The *Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021* will repeal the 2016 Determination.

Details of the *Biosecurity (Biosecurity Activity Zones) Determination 2021*

Section 1—Name

This section provides that the name of the legislative instrument is the *Biosecurity (Biosecurity Activity Zones) Determination 2021* (the Determination).

Section 2—Commencement

This section provides that the Determination commences on the later of:

- (a) the day after the Determination is registered as an instrument; and
- (b) the day and time the *Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021* commences.

The *Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021* will repeal the *Biosecurity (Biosecurity Activity Zones) Determination 2016* (the 2016 Determination). The commencement provision ensures that the Determination will not commence until the 2016 Determination has been repealed.

Section 3—Authority

This section provides that the Determination is made under subsection 395(1) of the *Biosecurity Act 2015*.

Section 4—Definitions

This section provides that in this instrument, *Act* means the *Biosecurity Act 2015* (the Act).

Section 5—Biosecurity Activity Zone—Mickleham (Victoria)

Subsection 395(1) of the Act allows the Director of Biosecurity (the Director) to determine that a specified area in Australian territory is a biosecurity activity zone if:

- the area is a place where powers are exercised or functions or duties are performed by, or on behalf of, the Commonwealth under the Act; and
- the Director is satisfied it is necessary to make the determination for the purpose of managing biosecurity risks associated with the exercise of those powers or the performance of those functions or duties.

Subsection 395(2) of the Act provides that without limiting subsection 395(1), a specified area may consist of the whole or part of specified premises (other than a conveyance).

Subsection 5(1) provides that for the purposes of subsection 395(1), the area specified in subsection 5(2) is a biosecurity activity zone.

Subsection 5(2) provides that the biosecurity activity zone is the area that:

- is known as the Post Entry Quarantine Facility at Mickleham (the **Facility**) on the commencement of the Determination (paragraph 5(2)(a)); and
- is on the land (specified land) known as 135 Donnybrook Road, Mickleham, Victoria on the commencement of the Determination (paragraph 5(2)(b)); and
- is bounded by the line starting at the intersection of Donnybrook Road and Polaris Road, Mickleham, Victoria, on the north-east corner of a fence (the **external perimeter fence**) that is a maximum-security fence on the outer perimeter of the Facility, and running sequentially as follows (paragraph 5(2)(c)):
 - south along the external perimeter fence (including the security gates or other access points) of the Facility to the south-east corner of that fence near the boundary with the Protected Grassland on the specified land;
 - west along the external perimeter fence of the Facility to the western boundary of the specified land;
 - north along the western boundary of the specified land to the intersection of that boundary with the northern boundary of the specified land near Donnybrook Road, Mickleham, Victoria;
 - east along the northern boundary of the specified land to the point along that boundary directly above the starting point;
 - south from that point (the point along the boundary directly above the starting point) to the starting point.

Paragraph 5(2)(d) provides that the specified area excludes the area on the specified land that is outside the area specified in paragraph 5(2)(c) of the Determination.

Note 1 following subsection 5(2) explains that the specified land is set out in folio number 2/LP202576J at Mickleham, City of Hume, County of Bourke, Victoria.

Note 2 following subsection 5(2) refers the reader to section 399 of the Act for the powers that may be exercised by a biosecurity officer in, or in relation to goods or premises in, a biosecurity activity zone.

The area specified in subsection 5(2) is the area where a post entry quarantine facility operated by the Department of Agriculture, Water and the Environment is located and is a place where powers are exercised, and functions and duties are performed by, or on behalf of, the Commonwealth under the Act. It is necessary to make the determination for the purpose of managing biosecurity risks associated with the exercise of those powers and the performance of those functions or duties.

Subsection 5(3) provides that Schedule 1 sets out a map to illustrate the specified area within 135 Donnybrook Road, Mickleham, Victoria described in subsection 5(2) of the Determination.

Section 399 of the Act provides the powers that a biosecurity officer may exercise in, or in relation to goods or premises in, a biosecurity activity zone. Under subsection 399(1), these powers are:

- the power to cause the biosecurity activity zone to be identified (whether by affixing notices or by markings or otherwise);
- the power to cause goods or premises in the biosecurity activity zone to be identified (whether by affixing notices or otherwise);
- the power to direct a person in the biosecurity activity zone to leave the biosecurity activity zone for a specified period (which must not be longer than 24 hours); and
- any other power prescribed by the regulations for the purposes of paragraph 399(1)(d).

Under subsection 399(2) of the Act, the powers set out in sections 333 and 334 relating to entry and exit requirements may also be exercised in relation to premises in a biosecurity activity zone in accordance with those sections. For example, under subsection 333(1), a biosecurity officer may, by notice in writing, impose a requirement that persons entering or leaving premises do so at specified places, that specified classes of persons not enter the premises, that persons entering the premises wear specified clothing or equipment, or that persons not interfere with the premises.

Section 400 of the Act allows a biosecurity enforcement officer to use such force against things in biosecurity activity zones as is necessary and reasonable in the circumstances.

The whole of the area known as 135 Donnybrook Road, Mickleham, Victoria is currently determined to be a biosecurity activity zone under the 2016 Determination, however, under this Determination part of that land is excluded as a biosecurity activity zone. This excluded land is to be occupied by the Centre for National Resilience, which will be managed by the Victorian State Government. As such, it is no longer a place where biosecurity powers, functions and duties will be carried out by or on behalf of the Commonwealth under the Act and should no longer be determined to be a biosecurity activity zone. The 2016 Determination will be revoked by the Director as required under subsection 398(1) of the Act, and the commencement provisions of the Determination ensure it will not commence until the 2016 Determination has been revoked.

Schedule 1 – Map of biosecurity activity zone – Mickleham (Victoria)

Schedule 1 sets out a map that illustrates the specified area on the specified land.