

## **EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

*Biosecurity Legislation Amendment (First Points of Entry) Determination 2022*

### **Legislative Authority**

The *Biosecurity Legislation Amendment (First Points of Entry) Determination 2022* (the Amendment Instrument) is made under subsection 226(2) and section 227 and subsection 232(2) and section 233 of the *Biosecurity Act 2015* (the Biosecurity Act).

Subsections 223(1) and 229(1) of the Biosecurity Act, taken together, provide that the Director of Biosecurity or the Director of Human Biosecurity (the 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, taken together, provide that the Director may make a determination under subsections 223(1) or 229(1) in relation to a landing place or port, as relevant, 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 subsections 223(1) or 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.

Sections 227 and 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) to (e) or 233(a) to (e) of the Biosecurity Act.

Relevantly, paragraphs 227(e) and 233(e) provide that one of these matters is that a circumstance prescribed by regulation has occurred. Sections 57 and 59 of the *Biosecurity Regulation 2016* (the Regulation) relevantly provide that a circumstance in which the Director may vary a determination made under subsection 223(1) or 229(1) of the Biosecurity Act in relation to a landing place or port is that:

- there has been a material change in the operations carried out at the landing place or port;

- there has been material change in the infrastructure or services available at the landing place or port; or
- the operator of the landing place or port has requested the variation of the determination.

The operators of the respective landing place and port have made a request, in writing, for their determinations to be extended. Further, material changes in operations, infrastructure and services at the respective landing place and port have occurred, requiring minor amendments to reflect current practice.

## **Purpose**

The purpose of the Amendment Instrument is to extend the end of the period of effect to 30 November 2022 for the *Biosecurity (First Point of Entry—Kingsford-Smith Airport, Sydney) Determination 2016* (the Sydney Airport Determination), and to 15 December 2022 for the *Biosecurity (First Point of Entry—Port of Cocos (Keeling) Islands) Determination 2016* (the Port of Cocos Islands Determination).

The Amendment Instrument also makes minor amendments to reflect current practices with respect to the operation of the respective first points of entry. The Sydney Airport Determination is amended to reflect that there is no longer a need to have a biosecurity entry point at Kingsford-Smith Airport, Sydney (Sydney Airport) for large animals (other than live horses), and to designate both permanent and temporary facilities as biosecurity entry points for live horses. The Port of Cocos Islands Determination is amended to reflect that the Port of Cocos (Keeling) Islands (the Port of Cocos Islands) is not a first point of entry for passenger vessels.

## **Background**

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

Subitem 1(1) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (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) of the Biosecurity Act in relation to a landing place even if the Director is not satisfied of the matters referred to in subsection 223(2) of the Biosecurity Act in relation to the landing place, and
- under subsection 229(1) of the Biosecurity Act in relation to a port even if the Director is not satisfied of the matters referred to in subsection 229(2) of that Act in relation to the port.

To support commencement of the Biosecurity Act, first point of entry determinations have been made as permitted by subitem 1(1) of Schedule 3 to the Biosecurity Transitional Provisions Act to allow landing places and ports that facilitate international arrivals of goods, vessels or aircraft to continue their operations while working towards meeting regulatory requirements.

Subitem 1(2) of Schedule 3 to the Biosecurity Transitional Provisions Act provides that a determination made relying on subitem 1(1) 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. Subitem 1(6) of Schedule 3 of that Act provides that the transition period is three years starting from when section 3 of the Biosecurity Act commenced. The initial transition period commenced on 16 June 2016, and 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.

Subitem 1(4) of Schedule 3 to the Biosecurity Transitional Provisions Act provides that the Director may, by legislative instrument, extend the transition period in relation to a landing place or port, if the Director is satisfied that the requirements referred to in subsections 223(2) or 229(3) of the Biosecurity Act, as relevant, will not be able to be met by 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 action required to achieve compliance with regulatory requirements. Some landing places and ports have since been subsequently extended by further determinations.

This includes Sydney Airport and the Port of Cocos Islands, which have had their transition periods as first points of entry extended until 15 June 2022 by the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021*.

As both Sydney Airport and the Port of Cocos Islands are unable to meet the relevant regulatory requirements before 15 June 2022, their transition periods are extended, respectively, to 30 November 2022 and 15 December 2022. This is effected by the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Amendment (2022 Measures No. 1) Instrument 2022*.

The Amendment Instrument extends the end of the period of effect for the Sydney Airport Determination to 30 November 2022, and for the Port of Cocos Islands Determination to 15 December 2022.

### **Impact and Effect**

The Amendment Instrument extends the period of effect for Sydney Airport as a landing place until 30 November 2022, and the Port of Cocos Islands as a port until 15 December 2022. This reflects the anticipated time needed for these first points of entry 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.

The Amendment Instrument also makes minor amendments to reflect current practices at both Sydney Airport and the Port of Cocos Islands. Specifically, the Sydney Airport Determination is amended to reflect that there is no longer a need to have a biosecurity entry point at Sydney Airport for large animals (other than live horses), that the 'DHL Horse corral' should no longer be listed as a biosecurity entry point as it is no longer operational, and to designate both permanent and temporary facilities as biosecurity entry points for live horses. The Port of Cocos Islands Determination is amended to reflect that the Port of Cocos Islands is not a first point of entry for passenger vessels.

This Amendment Instrument is imperative to ensure that:

- Sydney Airport can continue to operate as a first point of entry, particularly with respect to the import of live horses, offering certainty to stakeholders such as importers and aircraft operators whilst managing biosecurity risk; and
- the Port of Cocos Islands can continue to operate as a first point of entry, offering certainty to stakeholders whilst managing biosecurity risk, particularly as Cocos

(Keeling) Islands is a remote community that already experiences difficulty importing essential goods.

## **Consultation**

### *Kingsford-Smith Airport, Sydney*

In considering whether Sydney Airport as a landing place met the requirements to make a subsection 223(1) first point of entry determination under the Biosecurity Act, or whether to extend the period of effect of the Sydney Airport Determination, the Department of Agriculture, Water and the Environment (the department) engaged actively with the operator, Sydney Airport Corporation Limited (SACL), to monitor its progress on meeting regulatory requirements with respect to live horses as specified goods. This included consultation in relation to the minor amendments made to the Sydney Airport Determination, with respect to the operations of the relevant biosecurity entry points for live horses and other large animals, and the delisting of the DHL Horse corral.

The department considers that SACL has demonstrated that it is taking steps to actively transition to normal arrangements as a first point of entry before the end of the extended transition period.

### *Port of Cocos (Keeling) Islands*

In considering whether the Port of Cocos Islands as a port met the requirements to make a subsection 229(1) first point of entry determination under the Biosecurity Act, or whether to extend the period of effect of the Port of Cocos Islands Determination, the department engaged directly with the operator of the Port of Cocos Islands, LINX Port Services Pty Ltd (LINX), to confirm the nature of their operations, the existing infrastructure and facilities, and to review their compliance with legislative requirements. The department also engaged directly with the administrator of port facilities for the Cocos (Keeling) Islands, the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC).

The department considers that LINX has demonstrated that it is taking steps to actively transition to normal arrangements as a first point of entry before the end of the extended transition period.

In considering the additional amendment to the Port of Cocos Islands Determination, to reflect that the Port of Cocos Islands is not a first point of entry for passenger vessels, the department also engaged directly LINX and DITRDC to confirm the operations and facilities of the Port.

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 and amendment 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* (the Legislation Act). However, under paragraphs 228(b) and 234(b) of the Biosecurity Act, it is not subject to disallowance. This is because an instrument that varies a determination made under subsection 223(1) or subsection 229(1) of the Biosecurity Act is varying a determination that designates a landing place or port, the designation of which is

based on scientific and technical information related to the biosecurity risk associated with the area.

Subjecting a first point of entry determination made under the Biosecurity Act to disallowance would undermine the technical and scientific assessment as to the appropriate management of biosecurity risks and frustrate risk management processes leading to the inadequate management of biosecurity risks. The possibility of disallowance would also have the potential to cause disruption and potential costs to stakeholders who make decisions in reliance on the determination. For example, aircraft travelling to Sydney Airport could not be certain of landing arrangements upon arrival until after the expiry of the disallowance period. Similarly, vessels travelling to the Port of Cocos Islands would encounter the same issue. This is particularly sensitive with respect to the Cocos (Keeling) Islands as the external territory is a remote community that already experiences difficulty importing essential goods.

As such, this Amendment Instrument, as an instrument made under subsection 226(2) and section 227, and subsection 232(2) and section 233 of the Biosecurity Act, is justified as not being subject to disallowance.

A statement of compatibility with human rights, prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required, as paragraph 15J(2)(f) of the Legislation Act only requires a statement to be prepared for disallowable legislative instruments.

**Details of the *Biosecurity Legislation Amendment (First Points of Entry) Determination 2022***

**Section 1 – Name**

This section provides that the name of the instrument is the *Biosecurity Legislation Amendment (First Points of Entry) Determination 2022* (the Amendment Instrument).

**Section 2 – Commencement**

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

**Section 3 – Authority**

This section provides that the Amendment Instrument is made under subsection 226(2) and section 227, and subsection 232(2) and section 233 of the *Biosecurity Act 2015* (the Biosecurity Act).

**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**

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

**Item [1]      Section 8 (table item 1)**

Section 8 (table item 1) of the *Biosecurity (First Point of Entry—Kingsford-Smith Airport, Sydney) Determination 2016* (the Sydney Airport Determination) provided that specified areas of Kingsford-Smith Airport, Sydney (Sydney Airport) were designated biosecurity entry points for specified goods. Column 1 of table item 1 provided that the goods specified were live horses, and other large animals, excluding domestic cats and dogs. Column 2 of table item 1 provided that the areas specified were the T1 Livestock Transfer Facility and the DHL Horse corral.

Item 1 of Schedule 1 of the Amendment Instrument repealed table item 1, substituting a new table item 1. Table item 1 now specifies that the areas known as the T1 Livestock Transfer Facility and the T1 Temporary Livestock Transfer Facility are designated biosecurity entry points for the specified goods of live horses. This amendment reflects both the current practice and the current facilities at Sydney Airport available for receiving live horses. Large animals (other than live horses), such as zoo animals, arriving by plane at Sydney Airport is a rare occurrence. If large animals do arrive, they are not brought to a designated biosecurity entry point, but rather handled on a case-by-case basis by biosecurity officers. As such, the category of goods known as large animals (other than cats and dogs) has been removed.

Further, the DHL Horse corral is no longer operational, and so has been removed as a designated biosecurity entry point.

The T1 Temporary Livestock Transfer Facility has been established as a facility to temporarily receive live horses, while the T1 Livestock Transfer Facility is being reconstructed as a new facility. The temporary facility has been assessed by the department in April 2022, and has been deemed acceptable for use as a temporary facility for receiving live horses. The department and the operator, Sydney Airport Corporation Limited, are working together to ensure adequate facilities, amenities and procedures are in place while the temporary facility is in use.

#### **Item [2]      Section 9**

Section 9 of the Sydney Airport Determination provided that the Sydney Airport Determination was to be repealed at the end of 15 June 2022.

Item 2 of Schedule 1 of the Amendment Instrument amends section 9 of the Sydney Airport Determination to omit “15 June 2022” as the repeal day for the Sydney Airport Determination, and substitutes “30 November 2022” as the repeal day. This has the effect of extending the period of effect for the Sydney Airport Determination, which designates Sydney Airport as a landing place, as provided by subsection 223(1) of the Biosecurity Act, and permitted by subitem 1(1) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (the Biosecurity Transitional Provisions Act), so that the period of effect now ends on 30 November 2022.

### ***Biosecurity (First Point of Entry—Port of Cocos (Keeling) Islands) Determination 2016***

#### **Item [3]      Section 5**

Section 5 of the *Biosecurity (First Point of Entry—Port of Cocos (Keeling) Islands) Determination 2016* (the Port of Cocos Islands Determination) provided that the Port of Cocos (Keeling) Islands (Port of Cocos Islands) was a first point of entry for vessels.

Item 3 of the Schedule 1 of the Amendment Instrument amends section 5 of the Port of Cocos Islands Determination to insert “other than passenger vessels”, after “vessels”. This reflects current practice, as passenger vessels do not visit the Cocos (Keeling) Islands, and suitable facilities do not exist for passenger vessels at the Port of Cocos Islands. There are no planned visits for passenger vessels.

#### **Item [4]      Section 7**

Section 7 of the Port of Cocos Islands Determination provided that the Port of Cocos Islands Determination was to be repealed at the end of 15 June 2022.

Item 4 of Schedule 1 of the Amendment Instrument amends section 7 of the Port of Cocos Islands Determination to omit “15 June 2022” as the repeal day for the Port of Cocos Islands Determination, and substitutes “15 December 2022” as the repeal day. This has the effect of extending the period of effect for the Port of Cocos Islands Determination, which designates the Port of Cocos Islands as a port, as provided by subsection 229(1) of the Biosecurity Act, and permitted by subitem 1(1) of Schedule 3 to the Biosecurity Transitional Provisions Act, so that the period of effect now ends on 15 December 2022.