

## **EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

*Biosecurity (First Point of Entry—Port of Sydney) Amendment (2023 Measures No.1)  
Determination 2023*

### **Legislative Authority**

The *Biosecurity (First Point of Entry—Port of Sydney) Amendment (2023 Measures No.1) Determination 2023* (the Amendment Determination) is made under section 233 of the *Biosecurity Act 2015* (the Biosecurity Act).

The Amendment Determination makes amendments to the *Biosecurity (First Point of Entry—Port of Sydney) Determination 2019* (the Port of Sydney Determination). The Port of Sydney Determination is made under subsection 229(1) of the Biosecurity Act.

Section 233 of the Biosecurity Act provides that if a determination is made under subsection 229(1) in relation to a port, the Director who made the determination may vary or revoke the determination, or vary the conditions specified in the determination (including by imposing new conditions), if the Director is satisfied of any of the matters set out in paragraphs 233(a) – (e) of the Biosecurity Act.

Paragraph 233(e) of the Biosecurity Act provides that one of these matters is that a circumstance prescribed by the regulations has occurred. Paragraph 59(c) of the *Biosecurity Regulation 2016* (the Regulation) provides that a circumstance in which the Director may vary a determination under section 233 of the Biosecurity Act in relation to a port is that the operator of the port has requested the variation or the revocation of the determination, or the variation of the conditions. An operator at Port of Sydney has requested variations to the Port of Sydney Determination.

### **Purpose**

The purpose of the Amendment Determination is to vary the Port of Sydney Determination to designate Department of Home Affairs Jetty, Neutral Bay as an additional biosecurity entry point for non-commercial vessels, non-commercial vessel baggage and non-commercial waste.

The Amendment Determination also amends the Port of Sydney Determination to:

- insert a definition for “container”; and
- amend the definitions for “general goods” and “waste”.

### **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, 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.

On 29 November 2019, Port of Sydney was determined as a first point of entry for vessels generally, and goods other than freight containers and live horses via the Port of Sydney Determination. The Port of Sydney Determination commenced effect on 16 December 2019.

At the end of 2022, the operators at Port of Sydney submitted a request to the Department of Agriculture, Fisheries and Forestry (the department) to vary the Port of Sydney Determination for the purposes of designating the Department of Home Affairs Jetty, Neutral Bay as an additional biosecurity entry point for non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste.

For the purposes of the Amendment Determination, the delegate of the Director of Biosecurity was satisfied that this request was a circumstance prescribed by the Regulation (see paragraph 59(c) of the Regulation). The delegate could therefore consider whether to vary the Port of Sydney Determination (see paragraph 233(e) of the Biosecurity Act).

The area of Port of Sydney known as Department of Home Affairs Jetty, Neutral Bay has been assessed as having the required facilities to assess, and if necessary, treat biosecurity risks associated with non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste as commensurate with the anticipated operations. For the purposes of the Amendment Determination, the delegate of the Director of Biosecurity was satisfied that Department of Home Affairs Jetty, Neutral Bay complies with the required regulatory standards and that the management of biosecurity risks at this place is acceptable. The delegate therefore varied the Port of Sydney Determination for the purposes of section 233 of the Biosecurity Act.

Additionally, the delegate of the Director of Biosecurity was satisfied with the proposed amendments to the definitions section of the Port of Sydney Determination for the purposes of ensuring consistency across the biosecurity legislative framework.

### **Impact and Effect**

The Amendment Determination amends the Port of Sydney Determination to designate “Department of Home Affairs Jetty, Neutral Bay” as an additional biosecurity entry point for non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste. Additionally, the Amendment Determination introduces a definition for “container” and amends the definitions for “general goods” and “waste”.

The Amendment Determination ensures that non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste arriving into Australian territory from overseas arrive at locations that have the facilities available to assess any biosecurity risk associated with those vessels and goods, and to manage such risks to an acceptable level. Vessels or goods arriving at locations that do not have the capacity to manage the biosecurity risk pose a threat that a disease or pest may enter Australia, establish or spread and cause harm to Australia’s human, plant and animal health, the environment and the economy.

### **Consultation**

In considering whether to make the Amendment Determination to vary biosecurity entry points for non-commercial vessels, non-commercial vessel baggage and non-commercial waste at Port of Sydney, the department engaged directly with the operator at Port of Sydney.

The department conducted onsite visits to Department of Home Affairs Jetty, Neutral Bay, exchanged correspondence and undertook ongoing communication with the operator to confirm the nature of their operations, assess those operations and provide technical and administrative support.

The information and evidence gathered from onsite visits and from the operator has informed the decision that the Port of Sydney Determination be varied so that Department of Home Affairs Jetty, Neutral Bay is designated as an additional biosecurity entry point for non-commercial vessels, non-commercial vessel baggage and non-commercial waste.

The Department of Health and Aged Care has also been consulted in relation to the Amendment Determination and provided a letter of endorsement on 5 May 2023.

The former Office of Best Practice Regulation (OBPR), now renamed the Office of Impact Assessment, 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 Determination are set out in the [Attachment](#).

### **Other**

The Amendment Determination is a legislative instrument, but under paragraph 234(b) of the Biosecurity Act, section 42 (disallowance) of the *Legislation Act 2003* (the Legislation Act) does not apply to the Determination.

The exemption from disallowance for the instrument is set out in primary legislation. The justification for the instrument being exempt includes that the Amendment Determination, by varying the Port of Sydney Determination, implements technically and scientifically based decisions to manage biosecurity risks arising from vessels, and the goods they carry, arriving in Australian territory from overseas, and thereby enables the government to uphold the objectives of the biosecurity framework.

Varying the Port of Sydney Determination to include a new biosecurity entry point (BEP) for the specified vessels and goods is based on a technical and scientific decision that the requirements in relation to the designation of the BEP have been met, and that the level of biosecurity risk associated with operations carried out at the BEP is acceptable. It is critical to the management of biosecurity risks that such a technical and scientific decision is implemented effectively.

It is also critical that stakeholders who make decisions in reliance on the Port of Sydney Determination have certainty as to first point of entry arrangements, including arrangements in relation to BEPs. A lack of certainty could cause confusion and disruption, and potentially undermine Australia's biosecurity framework. For example, neither non-commercial vessels travelling to Port of Sydney nor biosecurity officials at that port could be certain of arrangements upon arrival in relation to which BEP to use until after the expiry of a disallowance period.

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 of compatibility of human rights to be prepared for disallowable legislative instruments.

**Details of the Biosecurity (First Point of Entry—Port of Sydney) Amendment (2023 Measures No.1) Determination 2023**

**Section 1 – Name**

This section provides that the name of the instrument is the *Biosecurity (First Point of Entry—Port of Sydney) Amendment (2023 Measures No.1) Determination 2023* (the Amendment Determination).

**Section 2 – Commencement**

This section provides for the Amendment Determination to commence on the day after it is registered.

**Section 3 – Authority**

This section provides that the Amendment Determination is made under 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 Determination 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 Determination has effect according to its terms.

## Schedule 1 – Amendments

### ***Biosecurity (First Point of Entry—Port of Sydney) Determination 2019***

#### **Item 1 – In the appropriate position in section 4**

Item 1 inserts a definition for **container** in the appropriate position in section 4 of the *Biosecurity (First Point of Entry—Port of Sydney) Determination 2019* (the Determination). This is to clarify that **container** has the same meaning as in the *Biosecurity Regulation 2016*. This has the effect of drawing the meaning from the Customs Convention on Containers 1972 (the Convention). Article 1 of Chapter 1 of the Convention provides that the term container shall mean an article of transport equipment (lift-van, movable tank or other similar structure):

- (i) fully or partially enclosed to constitute a compartment intended for containing goods;
- (ii) of a permanent character and accordingly strong enough to be suitable for repeated use;
- (iii) specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;
- (iv) designed for ready handling, particularly when being transferred from one mode of transport to another;
- (v) designed to be easy to fill and to empty; and
- (vi) having an internal volume of one cubic metre or more;

the term "container" shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container. The term "container" shall not include vehicles, accessories or spare parts of vehicles, or packaging;

This insertion has the effect of facilitating the understanding of defined terms **freight container** and **general goods** in both of which **container** is referenced.

#### **Item 2 - Section 4 (definition of *general goods*)**

Item 2 amends the definition of **general goods** in section 4 of the Determination. This item omits “(as defined by section 19 of the Act)” from the definition on the basis that the definition of **goods** under section 4 already notes that it is defined by section 19 of the *Biosecurity Act 2015* (the Biosecurity Act). As such, its use in the definition for **general goods** is redundant.

#### **Item 3 - Section 4 (definition of *waste*)**

Item 3 amends the definition of **waste** in section 4 of the Determination. This item omits “(as defined by section 19 of the Act)” from the definition on the basis that the definition of **goods** under section 4 already notes that it is defined by section 19 of the Biosecurity Act. As such, its use in the definition for **waste** is redundant.

#### **Item 4 - Section 7 (table item 1, column 2)**

Item 4 amends table item 1, column 2 of section 7 of the Port of Sydney Determination to provide that both Department of Home Affairs Jetty, Neutral Bay and Sydney Superyacht Marina are biosecurity entry points for non-commercial vessels arriving at Port of Sydney.

The effect of this amendment is that Department of Home Affairs Jetty, Neutral Bay is designated as an additional biosecurity entry point (BEP) for non-commercial vessels.

Section 246 of the Biosecurity Act provides that vessels subject to biosecurity control that have moored at a first port of entry and for which there is a BEP for that vessel must be brought to the BEP as soon as practicable. This means that that non-commercial vessels arriving at the Port of Sydney must be brought either to Department of Home Affairs Jetty, Neutral Bay or Sydney Superyacht Marina.

**Item 5 - Section 8 (table item 1, column 2)**

Item 5 amends table item 1, column 2 of section 8 of the Port of Sydney Determination to provide that both Department of Home Affairs Jetty, Neutral Bay and Sydney Superyacht Marina are biosecurity entry points for non-commercial vessel baggage and non-commercial vessel waste.

The effect of this amendment is that Department of Home Affairs Jetty, Neutral Bay is designated as an additional BEP for non-commercial vessel baggage and non-commercial vessel waste.

Section 147 of the Biosecurity Act provides that, unless limited exceptions apply, where a BEP has been designated for goods, the person in charge of the vessel must ensure that the goods that are to be unloaded from the vessel are brought to the BEP for those goods as soon as practicable. This means that that non-commercial vessel baggage and non-commercial vessel waste arriving on vessels at Port of Sydney must be brought either to Department of Home Affairs Jetty, Neutral Bay or Sydney Superyacht Marina.