

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Sydney Kingsford Smith Airport) Amendment (2024 Measures No.1) Determination 2024

Legislative Authority

The *Biosecurity (First Point of Entry—Sydney Kingsford Smith Airport) Amendment (2024 Measures No.1) Determination 2024* (the Amendment Determination) is made under section 227 of the *Biosecurity Act 2015* (the Biosecurity Act).

The Amendment Determination makes amendments to the *Biosecurity (First Point of Entry—Sydney Kingsford Smith Airport) Determination 2022* (the Sydney Airport Determination). The Sydney Airport Determination is made under subsection 223(1) of the Biosecurity Act.

Section 227 of the Biosecurity Act provides that if a determination is made under subsection 223(1) in relation to a landing place, 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 227(a) – (e) of the Biosecurity Act.

Paragraph 227(e) of the Biosecurity Act provides that one of these matters is that a circumstance prescribed by the regulations has occurred. Paragraph 57(c) of the *Biosecurity Regulation 2016* (the Regulation) provides that a circumstance in which the Director may vary a determination under section 227 of the Biosecurity Act in relation to a landing place is that the operator of the landing place has requested the variation or the revocation of the determination, or the variation of the conditions. The operator at Sydney Kingsford Smith Airport has requested variations to the Sydney Airport Determination.

Purpose

The purpose of the Amendment Determination is to vary the Sydney Airport Determination to determine Sydney Kingsford Smith Airport as a first point of entry for all goods and to designate T1 Livestock Transfer Facility within Sydney Kingsford Smith Airport as a biosecurity entry points for baggage and live horses.

Consequential to these amendments, the Amendment Determination also amends the Sydney Airport Determination to:

- repeal the definitions for ‘live horses from New Caledonia’ and ‘live horses from New Zealand’;
- remove the designation of T1 Temporary Livestock Facility as a biosecurity entry point for baggage;
- remove the designation of T1 Temporary Livestock Facility as a biosecurity entry point for live horses from New Caledonia and live horses from New Zealand.

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 21 November 2022, Sydney Kingsford Smith Airport was determined as a first point of entry for aircraft generally, and goods generally, with the exception of live horses, other than live horses from New Zealand and live horses from New Caledonia. The Sydney Airport Determination commenced on 1 December 2022.

Before the Sydney Airport Determination was made, the operator at Sydney Kingsford Smith Airport advised Department of Agriculture, Fisheries and Forestry (the department) that they intended put in place the required facilities to assess and, if necessary, treat biosecurity risks associated with all live horses, not just horses from New Zealand and New Caledonia. On 20 October 2023, the operator at Sydney Kingsford Smith Airport submitted a request to the department to vary the Sydney Airport Determination for the purposes of determining Sydney Kingsford Smith Airport as a first point of entry for all goods (including all live horses) and designating the T1 Livestock Transfer Facility as a biosecurity entry point for baggage and live horses.

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 57(c) of the Regulation). The delegate could, therefore, consider whether to vary the Sydney Airport Determination (see paragraph 227(e) of the Biosecurity Act).

Sydney Kingsford Smith Airport, as a landing place, has been assessed as having the required facilities to assess, and if necessary, treat biosecurity risks associated with aircraft generally and all goods. For the purposes of the Amendment Determination, the delegate of the Director of Biosecurity was satisfied that Sydney Kingsford Airport, as a first point of entry for aircraft generally and all goods, complies with the required regulatory standards and that the management of the level of biosecurity risk at this landing place is acceptable.

The area of Sydney Kingsford Smith Airport known as T1 Livestock Transfer Facility has also been assessed as a biosecurity entry point having the required facilities to assess and, if necessary, treat biosecurity risks associated with baggage and live horses as commensurate with the anticipated operations. For the purposes of the Amendment Determination, the delegate of the Director of Biosecurity was satisfied that T1 Livestock Transfer Facility complies with the required regulatory standards and that the management of biosecurity risks at this place is acceptable.

Additionally, the delegate of the Director of Biosecurity was satisfied with the proposed consequential amendments to the definitions section of the Sydney Airport Determination.

Therefore, the delegate of the Director of Biosecurity has made the Amendment Determination and so has varied the Sydney Airport Determination for the purposes of section 227 of the Biosecurity Act.

Impact and Effect

The Amendment Determination amends the Sydney Airport Determination so that Sydney Kingsford Smith Airport is determined as a first point of entry for all goods, including live horses. As the restrictions placed on live horses, other than live horses from New Zealand and live horses from New Caledonia, have been removed by the Amendment Determination, it also removes the definitions of ‘live horses from New Caledonia’ and ‘live horses from New Zealand’ as consequential amendments.

The Amendment Determination also amends the Sydney Airport Determination to designate “T1 Livestock Transfer Facility” as a biosecurity entry point for baggage and live horses. The

T1 Livestock Transfer Facility is a newly constructed permanent facility that has been assessed as compliant with the required regulatory standards and able to manage biosecurity risks associated with its operations to an acceptable level. Consequentially, the Amendment Determination also amends the Sydney Airport Determination to remove “T1 Temporary Livestock Transfer Facility” as a biosecurity entry point for baggage and live horses. This is because the T1 Temporary Livestock Transfer Facility has served its purpose as an interim solution for the facilitation of baggage and live horses from New Zealand and New Caledonia arriving into Australian territory via Sydney Kingsford Smith Airport, and is no longer required. The Amendment Determination provides that the T1 Livestock Transfer Facility becomes one of four designated biosecurity entry points to which baggage entering into Australian territory via an aircraft at Sydney Kingsford Smith Airport can be brought following its unloading from the aircraft. The T1 Livestock Transfer Facility is the only designated biosecurity entry point to which live horses may be brought at Sydney Kingsford Smith Airport.

The Amendment Determination ensures that baggage and live horses arriving into Australian territory arrive at locations that have the facilities available to assess any biosecurity risk associated with those aircraft and goods, and to manage such risks to an acceptable level.

Consultation

In considering whether to make the Amendment Determination, the department engaged directly with the operator at Sydney Kingsford Smith Airport.

The department conducted onsite visits to T1 Livestock Transfer Facility, 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 Sydney Airport Determination be varied so that T1 Livestock Transfer Facility is designated as one of four biosecurity entry point for baggage and as a biosecurity entry point for live horses.

With respect to repeals of the definitions in the Sydney Airport Determination, the department consulted with the operator at Sydney Kingsford Smith Airport. The operator at Sydney Kingsford Smith Airport was agreeable to the proposed amendments as consequential to the other amendments.

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 228(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 Sydney Airport Determination, implements technically and scientifically based decisions to manage biosecurity risks arising from aircraft, 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 Sydney Airport Determination to include a new biosecurity entry point (BEP) for baggage and live horses 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 Sydney Airport 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 aircraft travelling to Sydney Kingsford Smith Airport nor biosecurity officials at that landing place could be certain of arrangements upon arrival in relation to BEPs until after the expiry of a disallowance period. This is particularly relevant for aircraft transporting live horses into Australian territory via Sydney Kingsford Smith Airport. Lack of certainty over arrangements on arrival could also be particularly sensitive with respect to Sydney Kingsford Smith Airport as one of the busiest airports in Australia.

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—Sydney Kingsford Smith Airport) Amendment (2024 Measures No.1) Determination 2024

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (First Point of Entry—Sydney Kingsford Smith Airport) Amendment (2024 Measures No.1) Determination 2024* (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 227 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—Sydney Kingsford Smith Airport) Determination 2022

Item 1 – Section 4 (definition of live horses from New Caledonia)

Item 1 repeals the definition of “live horses from New Caledonia” in section 4 of the *Biosecurity (First Point of Entry—Sydney Kingsford Smith Airport) Determination 2022* (the Sydney Airport Determination).

This amendment is consequential to the amendment made by item 3 below which provides that Sydney Kingsford Smith Airport is determined to be a first point of entry for all goods, without any restrictions.

Item 2 - Section 4 (definition of live horses from New Zealand)

Item 2 repeals the definition of “live horses from New Zealand” in section 4 of the Sydney Airport Determination.

This amendment is consequential to the amendment made by item 3 below which provides that Sydney Kingsford Smith Airport is determined to be a first point of entry for all goods, without any restrictions.

Item 3 - Section 6

Item 3 amends section 6 of the Sydney Airport Determination. This item omits “goods generally, with the exception of live horses, other than live horses from New Zealand and live horses from New Caledonia” and substitutes “all goods”.

The effect of this amendment is that Sydney Kingsford Smith Airport is determined as a first point of entry for all goods, including all live horses.

Item 4 - Section 8 (table item 1, column 2, paragraph (d))

Item 4 amends table item 1, column 2, paragraph (d) of section 8 of the Sydney Airport Determination to omit “Temporary”.

The effect of this amendment is that T1 Livestock Transfer Facility is designated as a biosecurity entry point (BEP) for baggage arriving at Sydney Kingsford Smith Airport, whilst removing T1 Temporary Livestock Facility as a biosecurity entry point for baggage.

The effect of section 147 of the Biosecurity Act is that, unless limited exceptions apply, where a BEP has been designated for goods, the person in charge of the aircraft arriving at a first point of entry (in this case, Sydney Kingsford Smith Airport) must ensure that the goods that are to be unloaded from the aircraft are brought to the BEP for those goods as soon as practicable. This means that baggage arriving at Sydney Kingsford Smith Airport must be brought to either ExecuJet Terminal, Jet Aviation Terminal, Sydney Kingsford Smith Airport Terminal 1 or T1 Livestock Transfer Facility.

Item 5 - Section 8 (table item 2)

Item 5 amends section 8 of the Sydney Airport Determination to repeal table item 2 and substitute the following:

2	Live horses	T1 Livestock Transfer Facility
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The effect of this amendment is that T1 Livestock Transfer Facility is designated as a BEP for live horses arriving at Sydney Kingsford Smith Airport.

The effect of section 147 of the Biosecurity Act is that, unless limited exceptions apply, where a BEP has been designated for goods, the person in charge of the aircraft arriving at a first point of entry (in this case, Sydney Kingsford Smith Airport) must ensure that the goods that are to be unloaded from the aircraft are brought to the BEP for those goods as soon as practicable. This means that live horses arriving at Sydney Kingsford Smith Airport must be brought to T1 Livestock Transfer Facility.