

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry

Biosecurity Act 2015

*Biosecurity (First Point of Entry—Port of Wyndham) Amendment (2024 Measures No. 1)
Determination 2024*

Legislative Authority

The *Biosecurity Act 2015* (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.

The *Biosecurity (First Point of Entry—Port of Wyndham) Amendment (2024 Measures No. 1) Determination 2024* (the Amendment Determination) is made under section 233 of the Biosecurity Act. The Amendment Determination makes amendments to the *Biosecurity (First Point of Entry—Port of Wyndham) Determination 2019* (the Port of Wyndham Determination). The Port of Wyndham 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) to 233(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 revocation of the determination, or the variation of the conditions in the determination. The operators at the Port of Wyndham have requested a variation of the Port of Wyndham Determination.

Purpose

The purpose of the Amendment Determination is to:

- vary the Port of Wyndham Determination to determine the Port of Wyndham as a first point of entry for an additional class of goods, being “inorganic bulk goods”, in addition to baggage carried on a vessel other than a non-commercial vessel or a passenger vessel
- designate Wyndham Wharf as a biosecurity entry point (BEP) for inorganic bulk goods
- designate Wyndham Anchorage Point as a BEP for passenger vessels, in addition to the existing BEP for such vessels, Wyndham Wharf.

Background

The Department of Agriculture, Fisheries and Forestry (the department) administers the Biosecurity Act to manage biosecurity threats that may cause harm to human, animal or plant health or the environment. The Biosecurity Act 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.

The Port of Wyndham Determination commenced on 16 June 2019, which determined the Port of Wyndham as a first point of entry for vessels other than non-commercial vessels and baggage carried on a vessel other than a non-commercial vessel or a passenger vessel. The Director of Biosecurity was satisfied that the Port of Wyndham met the requirements of subsection 229(2) of the Biosecurity Act.

On 10 April 2024, the operators at the Port of Wyndham submitted a request to the department to vary the Port of Wyndham Determination for the purposes of determining Port of Wyndham as a first point of entry for inorganic bulk goods, and designating Wyndham Wharf as a BEP for inorganic bulk goods.

The port operators, supported by representatives from the agriculture industry, have requested this primarily to allow the import of inorganic fertiliser to support cotton farming and other regional agricultural industries. This is expected to benefit the Australian economy and regional employment in the Kimberley region.

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 Wyndham Determination (see paragraph 233(e) of the Biosecurity Act).

The Port of Wyndham, as a port, has been assessed as having the required facilities to assess, and if necessary, treat biosecurity risks associated with vessels other than non-commercial vessels, and crew baggage carried on vessels other than non-commercial or passenger vessels, and inorganic bulk goods. In particular, it has been assessed by the department as having appropriate procedures in place for providing biosecurity measures, and as having adequate facilities and amenities available at the port for biosecurity and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act.

The areas of the Port of Wyndham known as “Wyndham Anchorage Point” and “Wyndham Wharf” have been assessed as BEPs to receive vessels other than non-commercial vessels. Under the Port of Wyndham Determination, Wyndham Wharf was designated as a BEP for passenger vessels, but not Wyndham Anchorage Point. The Amendment Determination has the effect of including Wyndham Anchorage Point as an additional BEP for passenger vessels. The port operators have requested this to allow the marine pilot to safely board the vessel to bring the vessel to the wharf.

The Port of Wyndham has been assessed as having the required facilities to inspect and, if necessary, treat biosecurity risks associated with inorganic bulk goods, commensurate with the anticipated operations of the port. The department has assessed both Wyndham Anchorage Point (for passenger vessels) and Wyndham Wharf (for a inorganic bulk goods) as

complying with the required regulatory standards and that the management of biosecurity risks at those areas is acceptable.

Therefore, the delegate of the Director of Biosecurity has made the Amendment Determination and varied the Port of Wyndham Determination for the purposes of section 233 of the Biosecurity Act.

Impact and Effect

The Amendment Determination amends the Port of Wyndham Determination such that the Port of Wyndham is determined as a first point of entry for both baggage carried on a vessel other than a non-commercial or passenger vessel, and inorganic bulk goods. The Amendment Determination also amends the Port of Wyndham Determination to designate the area “Wyndham Wharf” as a BEP for inorganic bulk goods. Consequential to these amendments, the Amendment Determination also inserts a new definition for “inorganic bulk goods”.

“Wyndham Anchorage Point” and “Wyndham Wharf” are existing areas in the Port of Wyndham that have been previously designated as BEPs for vessels other than non-commercial vessels and passenger vessels, and vessels other than non-commercial vessels, respectively. Both areas are also designated as BEPs for the unloading of baggage carried on a vessel other than a non-commercial vessel or a passenger vessel (for example, crew baggage from commercial vessels).

The Amendment Determination has the effect of designating Wyndham Anchorage Point as a BEP for passenger vessels. Under the Port of Wyndham Determination as amended, neither Wyndham Anchorage Point nor Wyndham Wharf will be designated as BEPs for passenger vessel baggage.

Both Wyndham Wharf and Wyndham Anchorage Point have been assessed as compliant with the required regulatory standards and able to manage biosecurity risks associated with inorganic bulk goods and passenger vessels, respectively, to an acceptable level.

Consultation

In considering whether to make the Amendment Determination, the department engaged directly with the operators at the Port of Wyndham.

The department has also consulted with the Department of Transport (Western Australia), Kimberley Ports Authority, Ord District Co-operative Limited, Regional Development Australia Kimberley and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts.

The Department of Health and Aged Care has also been consulted in relation to the Amendment Determination and provided a letter of endorsement on 21 November 2024.

The former Office of Best Practice Regulation (OBPR), now 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

The Amendment Determination commences on the day after the instrument was registered on the Federal Register of Legislation.

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

Other

The Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act), but under paragraph 234(b) of the Biosecurity Act, section 42 (disallowance) of the Legislation Act does not apply to the Amendment 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 Wyndham 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 Wyndham Determination to be a first point of entry for inorganic bulk goods and to designate Wyndham Wharf as a BEP for inorganic bulk goods is based on a technical and scientific decision in relation to the management of biosecurity risk. It is critical that the implementation of the scientific and technical decision is effective to ensure that biosecurity risk is managed to an acceptable level.

It is also critical that stakeholders who make decisions in reliance on the Port of Wyndham Determination (and the Amendment 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 vessels travelling to Port of Wyndham nor biosecurity officials at that port could be certain of arrangements upon arrival in relation to the BEPs until after the expiry of a disallowance period. Certainty around the ability for inorganic bulk goods such as fertiliser to arrive at the Port of Wyndham is necessary for farmers to plan for, and operate their businesses and achieve cost effective agricultural production.

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 Wyndham) 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—Port of Wyndham) Amendment (2024 Measures No. 1) Determination 2024* (the Amendment Determination).

Section 2 – Commencement

Subsection 2(1) provides for the Amendment Determination to commence on the day after it is registered.

The note below the table provides that the table relates only to the provisions of the Amendment Determination as originally made. The table will not be amended to deal with later amendments of the Amendment Determination. The purpose of this note is to clarify that the commencement of any subsequent amendments will not be reflected in this table.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in that column, or information in it may be edited, in any published version of the instrument.

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 this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Amendments

Biosecurity (First Point of Entry—Port of Wyndham) Determination 2019

Item [1] – In the appropriate position in section 4

Item 1 inserts a definition of “Inorganic bulk goods” in section 4 of the *Biosecurity (First Point of Entry—Port of Wyndham) Determination 2019* (the Port of Wyndham Determination). The new definition provides that “inorganic bulk goods” means chemicals, ores, minerals or gases that are both brought or imported into Australian territory in bulk, and do not contain animals, plants, organic compounds or microbes.

Item [2] – Section 6

Item 2 repeals existing section 6 of the Port of Wyndham Determination and substitutes a new section titled “First point of entry—goods”.

New section 6 provides that the Port of Wyndham is a first point of entry for inorganic bulk goods, as well as baggage carried on a vessel other than a non-commercial vessel or a passenger vessel.

Note 1 under new section 6 provides that Port of Wyndham is not a first point of entry for any other goods. Note 2 under new section 6 directs the reader to sections 173 and 174 of the Biosecurity Act (which deal with prohibited goods and conditionally non-prohibited goods) and any determinations made under those sections, for other matters relating to whether particular goods may be brought into a particular first point of entry. These notes are the same as the notes that currently exist under section 6 of the Port of Wyndham Determination.

Item [3] – Section 7

Item 3 repeals existing section 7 of the Port of Wyndham Determination and substitutes a new section titled “Biosecurity entry points—vessels”.

New section 7 designates that both Wyndham Anchorage Point and Wyndham Wharf are biosecurity entry points for vessels other than non-commercial vessels. The effect of this amendment is that vessels other than non-commercial vessels, including passenger vessels, are able to arrive at both Wyndham Anchorage Point and Wyndham Wharf, rather than Wyndham Wharf only.

The note under new section 7 reflects that the effect of section 246 of the Biosecurity Act is that, unless limited exceptions apply, where a biosecurity entry point has been designated for a class of vessels, the person in charge of the vessel arriving at a first point of entry (in this case, the Port of Wyndham) must ensure that the vessel is brought to a biosecurity entry point designated for that class of vessel as soon as practicable. As a result, all vessels other than non-commercial vessels must be brought to either Wyndham Anchorage Point or Wyndham, as appropriate. The note under new section 7 is the same as the note under existing section 7 of the Port of Wyndham Determination.

Item [4] – Section 8 (after table item 1)

Item 4 inserts new table item 2 after table item 1 in the table in section 8 of the Port of Wyndham Determination. New table item 2 provides for inorganic bulk goods (in column 1 of the table, which provides for goods) and Wyndham Wharf (in column 2 of the table, which provides for areas).

Existing section 8 of the Port of Wyndham Determination provides that each area of Port of Wyndham specified in column 2 of an item in the table is designated as a biosecurity entry point for goods, or goods included in a class of goods, specified in column 1 of the item.

The effect of this amendment is that Wyndham Wharf is designated as a biosecurity entry point for inorganic bulk goods.

The effect of section 147 of the Biosecurity Act is that, unless limited exceptions apply, where a biosecurity entry point has been designated for a class of goods, the person in charge of the vessel arriving at a first point of entry (in this case, the Port of Wyndham) must ensure that the goods that are to be unloaded from the vessel are brought to the biosecurity entry point for those goods as soon as practicable. As a result, inorganic bulk goods arriving at the Port of Wyndham must be brought to Wyndham Wharf.