

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (Biosecurity Activity Zones) Determination 2016

Legislative Authority

The *Biosecurity Act 2015* (the Biosecurity Act) provides the Commonwealth with powers to assess and manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy.

Subsection 395(1) of the Biosecurity Act provides that the Director of Biosecurity may determine that a specified area in Australia is a biosecurity activity zone. Under subsection 395(1), the Director of Biosecurity can make such a determination if (a) the area is a place where areas are exercised or functions or duties are performed by, or on behalf of, the Commonwealth under the Biosecurity Act and (b) the Director of Biosecurity 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 Biosecurity Act provides that a determination under subsection 395(1) is a legislative instrument.

A determination for a biosecurity activity zone will remain in force until it is revoked under section 398 (see subsection 395(5)) of the Biosecurity Act).

Purpose

The purpose of the *Biosecurity (Biosecurity Activity Zones) Determination 2016* (the Determination) is to determine areas as biosecurity activity zones under the Biosecurity Act. Once determined as a biosecurity activity zone, certain powers under the Biosecurity Act may be exercised in those zones in relation to goods and premises allowing for greater ability to assess and manage biosecurity risk.

Background

The Biosecurity Act commenced on 16 June 2016 –12 months after royal assent. The Biosecurity Act replaces the *Quarantine Act 1908* (the Quarantine Act) and provides a strong regulatory framework that enables the management of biosecurity risks in a modern and responsive manner. The Biosecurity Act enhances Australia's capacity to manage biosecurity risks into the future by providing a high-level legislative framework that clearly sets out the powers that can be exercised by officials as well as the requirements for those being regulated.

The Biosecurity Act is principles-based and lays the foundation for biosecurity risk management. The detail and specific information requirements for certain activities under the Biosecurity Act are provided for in the *Biosecurity Regulation 2016* and other delegated legislation, including this Determination. This Determination sets out biosecurity activity

zones which enables certain powers under the Biosecurity Act to be exercised in those zones in relation to goods and premises.

Impact and Effect

The determination of biosecurity activity zones by the Director of Biosecurity provides greater ability to assess and manage biosecurity risk in those areas. The availability of these powers are necessary for areas which have a higher biosecurity risk because of the nature of activities undertaken at those locations.

Consultation

During the 2015–16 implementation of the Biosecurity Act, the Department of Agriculture and Water Resources actively raised awareness among clients, stakeholders and the general public that new Biosecurity legislation commences on 16 June 2016.

This included holding forums targeting peak industry bodies in Canberra and major city regions in Australia, which were attended by over 700 representatives overall from shipping, ports, petroleum, airlines, airports, freight, cargo, food and beverage industries, research, education, science, plant and animal health and state, territory and federal governments. Meetings and workshops were also held with state and territory governments, other government agencies (including the Department of Health, Department of Defence and the Department of Immigration and Border Protection), as well as with consultative committees, and environmental groups. Regular biosecurity legislation update notifications were distributed to subscribers across five of the department's subscription lists. International trading partners were also notified via the World Trade Organization Sanitary and Phytosanitary notification.

The consultation undertaken built upon extensive consultation on the Biosecurity Act which began in 2009. During the development process, the department consulted with industry representatives from the cargo, shipping, ports, supply chain and logistics, airline, airport, customs, environment, animal, plant, invasive species, primary production and petroleum/exploration sectors through working groups.

Targeted consultation with state and territory governments was undertaken to determine biosecurity activity zones, however public consultation was not necessary for this Determination as it relates to the management of Commonwealth premises.

The department consulted with the Office of Parliamentary Counsel (OPC) in the drafting of the Determination, and the Office of Best Practice Regulation advised on 31 March 2016 that the Regulation Impact Statement (RIS) conducted for the Biosecurity Bill 2014 (ID: 16609) was sufficient for the purposes of the Biosecurity delegated legislation and a further RIS is not required .

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. However, under subsection 395(4) of the Biosecurity Act, the Determination is not subject to disallowance. The decision to make a determination under subsection 395(1) of the Biosecurity Act is a technical and scientific based decision to manage biosecurity risks associated with activities undertaken at those specified areas.

A Statement of Compatibility with Human Rights was prepared for the Biosecurity Act. An additional statement is not required for this Determination as it is not subject to disallowance.

Details of the *Biosecurity (Biosecurity Activity Zones) Determination 2016.*

Section 1 – Name

This section provides that the name of the Determination is the *Biosecurity (Biosecurity Activity Zones) Determination 2016*.

Section 2 – Commencement

This section provides that the Determination commences at the same time as section 3 of the Biosecurity Act commences. Section 3 of the Biosecurity Act commences on 16 June 2016.

Section 3 – Authority

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

The determined biosecurity activity zones are places where powers are exercised or functions or duties are performed by, or on behalf of the Commonwealth under the Biosecurity Act. The Director of Biosecurity is satisfied that it is necessary to make this Determination for the purpose of managing biosecurity risks associated with the exercise of those powers or the performance of those functions or duties.

Sections 4 to 6 – Biosecurity activity zone

For each of the sections 4 to 6, subsection (1) specifies that the area in subsection (2) is a biosecurity activity zone.

For each of the sections 4 to 6, subsection (2) provides the specific description of the area that will be determined as a biosecurity activity zone.

The following biosecurity activity zones are determined:

- Mickleham (Victoria) – the area is the land in folio identifier 2/LP202576J at Mickleham, City of Hume, County of Bourke, Victoria (known as 135 Donnybrook Road, Mickleham, Victoria)
- Spotswood (Victoria) – the area is the land being Crown Allotments 64 and 66 Section 7 respectively Parish of Cut-Paw-Paw in Victoria being the whole of the land comprised in Certificates of Title Volume 7720 Folio 33 and Volume 9971 Folio 289 (known as 43 Craig Street, Spotswood Victoria), excluding the land and any buildings at 47 Craig Street.
- Torrens Island (South Australia) – the area is the portion of land comprised in Certificate of Title Volume 6132 Folio 765 being portion of allotment 302 in the area named Torrens Island in the Hundred of Port Adelaide, South Australia (known as Torrens Island Avian Quarantine Facility, Grand Trunkway, Gillman, South Australia).

The notes to sections 3 to 5 provide that section 399 of the Biosecurity Act sets out the powers that may be exercised by a biosecurity officer in, or in relation to goods or premises in, a biosecurity activity zone. These powers include:

- the power to cause the biosecurity activity zone to be identified (including by affixing notices or markings)
- the power to cause goods or premises (including conveyances) within the zone to be identified (including by affixing notices or markings)
- the power to direct a person in the biosecurity activity zone to leave the zone for up to 24 hours, and
- any powers prescribed in the regulations for the purposes of section 399.

The powers provided in relation to entry and exit requirements in sections 333 and 334 of the Biosecurity Act may also be exercised in a biosecurity activity zone.

These powers will assist with the assessment and management of biosecurity risk in these post entry quarantine facilities, which have a higher biosecurity risk because of the nature of activities undertaken at those locations. Additionally, demarking the zone will notify the public of the potential biosecurity risks associated with the area, goods or premises.