

## **EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

### **FIRST POINTS OF ENTRY LANDING PLACES DETERMINATIONS**

#### **Determinations covered by this statement**

*Biosecurity (First Point of Entry—Adelaide Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Alice Springs Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Avalon Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Brisbane Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Broome Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Cairns Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Canberra Airport and Royal Australian Air Force Base, Fairbairn) Determination 2016.*

*Biosecurity (First Point of Entry—Christmas Island Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Cocos (Keeling) Islands Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Darwin International Airport and Royal Australian Air Force Base, Darwin) Determination 2016.*

*Biosecurity (First Point of Entry—Essendon Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Gold Coast Airport) Determination 2016.*

*Biosecurity (First Point of Entry—HMAS Albatross) Determination 2016.*

*Biosecurity (First Point of Entry—Hobart Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Horn Island Airport) Determination 2016.*

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

*Biosecurity (First Point of Entry—Lord Howe Island Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Norfolk Island Airport) Determination 2016*

*Biosecurity (First Point of Entry—Perth Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Port Hedland Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Royal Australian Air Force Base, Amberley) Determination 2016.*

*Biosecurity (First Point of Entry—Royal Australian Air Force Base, Edinburgh) Determination 2016.*

*Biosecurity (First Point of Entry—Royal Australian Air Force Base, Learmonth) Determination 2016.*

*Biosecurity (First Point of Entry—Royal Australian Air Force Base, Pearce) Determination 2016.*

*Biosecurity (First Point of Entry—Royal Australian Air Force Base, Richmond) Determination 2016.*

*Biosecurity (First Point of Entry—Royal Australian Air Force Base, Tindal) Determination 2016.*

*Biosecurity (First Point of Entry—Royal Australian Air Force Base, Williamtown) Determination 2016.*

*Biosecurity (First Point of Entry—Sunshine Coast Airport) Determination 2016.*

*Biosecurity (First Point of Entry—Townsville Airport and Royal Australian Air Force Base, Townsville) Determination 2016.*

*Biosecurity (First Point of Entry—Tullamarine Airport, Melbourne) 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 223(1) of the Biosecurity Act provides that the Director of Biosecurity or the Director of Human Biosecurity may determine that a specified landing place in Australian territory is a first point of entry for aircraft generally, or a specified class of aircraft 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.

Subsection 223(2) of the Biosecurity Act provides that the Director of Biosecurity or the Director of Human Biosecurity may make a determination under subsection (1) in relation to a landing place 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 are met and the level of biosecurity risk associated with operations carried out at the landing place is acceptable.

A Director may take into consideration a range of factors when determining whether he or she is satisfied that the level of biosecurity risk associated with the operations at the landing place is acceptable. This may include the location, surrounding environment, facilities available to manage biosecurity risk, and any other matters including those of national interest, or with economic or defence considerations.

Item (1) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Biosecurity Transitional Provision Act) provides that despite subsection 223(2) of the Biosecurity Act, the Director of Biosecurity or the Director of Human Biosecurity may make a determination under subsection 223(1) of that 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 Act in relation to the landing place. Item (2) of Schedule 3 to the Biosecurity Transitional Provision Act provides that a determination made relying on item (1) of that Act provides that the determination must not be expressed or varied to have effect for a period that is longer than the transition period for the landing place. Item (6) of Schedule 3 to the Biosecurity Transitional Provision Act provides that the transition period is three years starting from when the Biosecurity Act commences.

## **Purpose**

The purpose of the First Points of Entry Landing Places Determinations (the Determinations) is to ensure that overseas aircraft and any goods on board enter Australia at a designated place that has the appropriate facilities to effectively manage any 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 these Determinations.

## **Impact and Effect**

Operators at landing places that become First Points of Entry will need to meet certain prescribed requirements to ensure that biosecurity risks associated with their operations can be adequately managed. These requirements may relate to physical infrastructure or facilities, processes or systems to manage biosecurity risks. Introduction of these requirements will decrease the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy.

## **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 legislation would commence 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.

The department consulted key landing place stakeholder groups on drafting of the minimum standards which show that the prescribed First Point of Entry requirements are met. This consultation is ongoing and the department will continue to consult directly with landing place operators during the transition phase to establish how each may meet the requirements of the regulation by June 2019.

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulation Impact Statement (RIS) for the Biosecurity Bill 2014 (ID: 16609). The OBPR advised on 31 March 2016 that a further RIS is not required. The department consulted the Office of Parliamentary Counsel in the drafting of these Determinations.

These Determinations are legislative instruments for the purposes of the *Legislation Act 2003*. However, they are not subject to disallowance under section 228 of the Biosecurity Act. The decision to make a determination under subsection 223(1) of the Biosecurity Act is a technical and scientific based decision based on whether the biosecurity risk can be satisfactorily managed.

A Statement of Compatibility with Human Rights was prepared for the Biosecurity Act. An additional statement is not required for these Determinations as they are not subject to disallowance.

## **Details of the First Points of Entry (landing places) Determinations**

### **Part 1 Preliminary**

#### **Section 1 – Name**

This section provides that the name of each of the Determinations is the First Point of Entry [landing place name] Determination.

#### **Section 2 – Commencement**

This section provides for the First Points of Entry Landing Places Determinations to commence on 16 June 2016.

#### **Section 3 – Authority**

This section provides that the First Points of Entry Landing Places Determinations are made under subsection 223(1) of the *Biosecurity Act 2015* and as permitted by subitem 1(1) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015*.

#### **Section 4 – Definitions**

This section provides definitions for the First Points of Entry Landing Places Determinations.

### **Part 2 First Point of Entry**

#### **First Point of Entry – aircraft**

This section specifies if a First Point of Entry is a First Point of Entry for aircraft generally, or specified classes of aircraft.

### **First Point of Entry – goods**

This section specifies if a First Point of Entry is a First Point of Entry for goods generally, or specified classes of goods. For example, in the Gold Coast Airport Determination this section specifies that Gold Coast Airport is a First Point of Entry for all goods other than animals.

### **First Point of Entry – [class of goods]**

Where the preceding section specifies classes of goods to which a First Point of Entry does not apply, this section will specify if the First Point of Entry is a First Point of Entry for any exceptions to the specific goods or classes of goods to which it would not apply.

For instance, in the Gold Coast Airport Determination this section specifies that Gold Coast Airport is a First Point of Entry for live domestic cats and domestic dogs brought or imported from New Zealand; and live fish.

## Part 3 Biosecurity Entry Points

### **Biosecurity Entry Points – aircraft**

This part specifies areas within the Firsts Points of Entry which are designated as biosecurity entry points for aircraft generally, or for specified classes of aircraft.

Where biosecurity entry points are specified, the aircraft must be brought to that biosecurity entry point as soon as practicable after arrival. Where a biosecurity entry point is not specified, a note will state that no areas of the landing place are designated as biosecurity entry points.

### **Biosecurity Entry Points – goods**

This part specifies areas within the Firsts Points of Entry which are designated as biosecurity entry points for goods generally, or for specified classes of goods.

Where biosecurity entry points are specified, the goods must be brought to that biosecurity entry point as soon as practicable after arrival. Where a biosecurity entry point is not specified, a note will state that no areas of the landing place are designated as biosecurity entry points.

## Part 4 – Conditions

This part specifies conditions which must be met by the owners or lessees of the landing places or a person or body responsible for carrying out operations at the landing places, and any conditions imposed on the operations at the landing places.

## Part 5 – Period of Effect

This part provides for the period in which the First Points of Entry Landing Places Determinations are in effect.