

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Adelaide Airport) Determination 2019
Biosecurity (First Point of Entry—Avalon Airport) Determination 2019
Biosecurity (First Point of Entry—Brisbane Airport) Determination 2019
Biosecurity (First Point of Entry—Cairns Airport) Determination 2019
Biosecurity (First Point of Entry—Canberra Airport) Determination 2019
Biosecurity (First Point of Entry—Darwin Airport and Royal Australian Air Force Base Darwin) Determination 2019
Biosecurity (First Point of Entry— Gold Coast Airport) Determination 2019
Biosecurity (First Point of Entry— HMAS Albatross Naval Air Station Nowra) Determination 2019
Biosecurity (First Point of Entry—Hobart Airport) Determination 2019
Biosecurity (First Point of Entry—Horn Island Airport) Determination 2019
Biosecurity (First Point of Entry - Melbourne Tullamarine Airport) Determination 2019
Biosecurity (First Point of Entry— Newcastle Airport and Royal Australian Air Force Base Williamtown) Determination 2019
Biosecurity (First Point of Entry—Perth Airport) Determination 2019
Biosecurity (First Point of Entry—Port Hedland Airport) Determination 2019
Biosecurity (First Point of Entry— Royal Australian Air Force Base Amberley) Determination 2019
Biosecurity (First Point of Entry— Royal Australian Air Force Base Edinburgh) Determination 2019
Biosecurity (First Point of Entry— Royal Australian Air Force Base Learmonth) Determination 2019
Biosecurity (First Point of Entry— Royal Australian Air Force Base Pearce) Determination 2019
Biosecurity (First Point of Entry— Royal Australian Air Force Base Richmond) Determination 2019
Biosecurity (First Point of Entry— Royal Australian Air Force Base Tindal) Determination 2019
Biosecurity (First Point of Entry—Sunshine Coast Airport) Determination 2019
Biosecurity (First Point of Entry— Townsville Airport and Royal Australian Air Force Base Townsville) Determination 2019

Legislative Authority

The *Biosecurity Act 2015* (Biosecurity Act) provides the Commonwealth with powers to assess and manage biosecurity risk, among other things. Biosecurity risk is defined at sections 9 and 310 of the Biosecurity Act.

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 any of the following:

- aircraft generally, or a specified class of aircraft that are subject to biosecurity control;

- 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 223(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.

Subsection 224(1) provides that a determination under subsection 223(1) in relation to a landing place may designate a specified area of the landing place as a biosecurity entry point for aircraft generally, or a specified class of aircraft that are subject to biosecurity control, and/or 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 225(1) provides that a determination under subsection 223(1) may be made subject to conditions. Subsection 225(2) provides that without limiting subsection 225(1), the conditions may relate to an owner or lessee of the landing place, a person or body that is responsible for carrying out operations at the landing place or/and the operations carried out at the landing place.

Purpose

The purposes of the:

- *Biosecurity (First Point of Entry—Adelaide Airport) Determination 2019* (Adelaide Airport Determination)
- *Biosecurity (First Point of Entry—Avalon Airport) Determination 2019* (Avalon Airport Determination)
- *Biosecurity (First Point of Entry—Brisbane Airport) Determination 2019* (Brisbane Airport Determination)
- *Biosecurity (First Point of Entry—Cairns Airport) Determination 2019* (Cairns Airport Determination)
- *Biosecurity (First Point of Entry—Canberra Airport) Determination 2019* (Canberra Airport Determination)
- *Biosecurity (First Point of Entry—Darwin Airport and Royal Australian Air Force Base Darwin) Determination 2019* (Darwin Airport and Royal Australian Air Force Base Darwin Determination)
- *Biosecurity (First Point of Entry—Gold Coast Airport) Determination 2019* (Gold Coast Airport Determination)
- *Biosecurity (First Point of Entry—HMAS Albatross Naval Air Station Nowra) Determination 2019* (HMAS Albatross Naval Air Station Nowra Determination)
- *Biosecurity (First Point of Entry – Hobart Airport) Determination 2019* (Hobart Airport Determination)
- *Biosecurity (First Point of Entry – Horn Island Airport) Determination 2019* (Horn Island Airport Determination)
- *Biosecurity (First Point of Entry – Melbourne Tullamarine Airport) Determination 2019* (Melbourne Tullamarine Airport Determination)

- *Biosecurity (First Point of Entry—Newcastle Airport and Royal Australian Air Force Base Williamstown) Determination 2019* (Newcastle Airport and Royal Australian Air Force Base Williamstown Determination)
- *Biosecurity (First Point of Entry—Perth Airport) Determination 2019* (Perth Airport Determination)
- *Biosecurity (First Point of Entry—Port Hedland Airport) Determination 2019* (Port Hedland Airport Determination)
- *Biosecurity (First Point of Entry— Royal Australian Air Force Base Amberley) Determination 2019* (Royal Australian Air Force Base Amberley Determination)
- *Biosecurity (First Point of Entry— Royal Australian Air Force Base Edinburgh) Determination 2019* (Royal Australian Air Force Base Edinburgh Determination)
- *Biosecurity (First Point of Entry— Royal Australian Air Force Base Learmonth) Determination 2019* (Royal Australian Air Force Base Learmonth Determination)
- *Biosecurity (First Point of Entry— Royal Australian Air Force Base Pearce) Determination 2019* (Royal Australian Air Force Base Pearce Determination)
- *Biosecurity (First Point of Entry— Royal Australian Air Force Base Richmond) Determination 2019* (Royal Australian Air Force Base Richmond Determination)
- *Biosecurity (First Point of Entry – Royal Australian Air Force Base Tindal) Determination 2019* (Royal Australian Air Force Base Tindal Determination)
- *Biosecurity (First Point of Entry—Sunshine Coast Airport) Determination 2019* (Sunshine Coast Airport Determination)
- *Biosecurity (First Point of Entry—Townsville Airport and Royal Australian Air Force Base Townsville) Determination 2019* (Townsville Airport and Royal Australian Air Force Base Townsville Determination)

(collectively, the Determinations) is to:

- determine that the landing places the subject of the Determinations are first points of entry for the purposes of section 223 of the Biosecurity Act;
- designate specified areas of those landing places as biosecurity entry points for the purposes of section 224 of the Biosecurity Act where required; and
- identify the conditions that the Determinations are subject to in accordance with section 225 of the Biosecurity Act.

Background

The *Quarantine Act 1908* (Quarantine Act) was replaced by the Biosecurity Act upon its commencement on 16 June 2016. The *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (Transitional Act) provided transitional and consequential provisions to support the commencement of the Biosecurity Act as it replaced the Quarantine Act. The Transitional Act provided transitional provisions to enable the requirements for first points of entry to be met as the transition from the Quarantine Act to the Biosecurity Act occurred. This was achieved through ‘transitional’ first point of entry determinations that would remain in effect for three years (the transition period). The transition period for a number of transitional determinations ended on 15 June 2019, meaning that such transitional determinations ceased to have effect on that day.

For the purposes of the Determinations, the Director of Biosecurity was satisfied that each landing place (that was previously subject to a transitional Determination) met the requirements of subsection 223(2) of the Biosecurity Act. The Director of Biosecurity

specified that such landing places were to be first points of entry for the purposes of subsection 223(1) of the Biosecurity Act.

Impact and Effect

The Determinations ensure that aircraft and goods that arrive in Australian territory from overseas arrive at a location that has the facilities available to assess any biosecurity risk and manage it to an acceptable level. Aircraft or goods arriving at a landing place that is not a first point of entry, and which does not have the capacity to manage the biosecurity risk, pose a threat that a disease or pest may enter, establish or spread and cause harm to Australia's human, plant and animal health, the environment and the economy.

Consultation

In considering whether the landing places met the requirements of subsection 223(2) of the Biosecurity Act, the Agriculture Department (department) engaged directly with operators at landing places to confirm the nature of their operations, supported assessment of those operations and provided technical and administrative support. The department sought and received support by landing place operators of all names of first points of entry and biosecurity entry points, as well as clarification of the activities carried out at those locations. This information has been incorporated into the Determinations.

The Department of Health has also been consulted in relation to the Determinations.

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulation Impact Statement (RIS) for the Biosecurity Bill 2014 (OBPR ID: 25191). OBPR advised on 31 March 2016 that a RIS is not required and, further to this, confirmed this advice in the context of the Determinations on 9 May 2019.

Details / Operation

Details of the Determinations are set out in the Attachment.

Other

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

Details of the Biosecurity (First Point of Entry [Landing Place]) Determinations

Part 1 Preliminary

Section 1 – Name

This section provides that the name of each of the Determinations is the Biosecurity First Point of Entry [Landing Place] Determination 2019 (the Determinations).

Section 2 – Commencement

This section provides for the Determinations to commence on 16 June 2019.

Section 3 – Authority

This section provides that the Determinations are made under subsection 223(1) of the *Biosecurity Act 2015*.

Section 4 – Definitions

This section provides definitions for terms contained in the Determinations. The Determinations provide that “Act” means the *Biosecurity Act 2015*. The Determinations provide that “aircraft” means an aircraft (as defined in section 9 of the Biosecurity Act) that is subject to biosecurity control. The Determinations further provide that “goods” means goods (as defined by section 19 of the Biosecurity Act) that are subject to biosecurity control or in relation to which an exposed goods order is in force.

The following Determinations:

- Newcastle Airport and Royal Australian Air Force Base Williamtown Determination
- Horn Island Airport Determination
- HMAS Albatross Naval Air Station Nowra Determination
- Sunshine Coast Airport Determination

also contain definitions for “waste” in section 4. These Determinations provide that “waste” means goods (as defined by section 19 of the Biosecurity Act) that are subject to biosecurity control and that are intended, by the person in charge of the aircraft on which the goods are carried, to be disposed of.

Part 2 First point of entry

First point of entry – aircraft

Section 5 of all of the Determinations, except the Royal Australian Air Force Base Tindal Determination, provides that the relevant landing place is a first point of entry for aircraft generally.

Section 5 of the Royal Australian Air Force Base Tindal Determination provides that the Royal Australian Air Force Base Tindal is a first point of entry for jet fighter aircraft. A note after section 5 provides that Royal Australian Air Force Base Tindal is not a first point of entry for any other aircraft.

First point of entry – goods

Section 6 of the Determinations provides whether a specified landing place is a first point of entry for goods (if any). For example, a specified landing place may be a first point of entry for all goods, no goods, or specified classes of goods.

Section 6 of the Royal Australian Air Force Base Learmonth Determination provides that Royal Australian Air Force Base Learmonth is not a first point of entry for goods.

Section 6 of the Royal Australian Air Force Base Tindal Determination provides that Royal Australian Air Force Base Tindal is a first point of entry for baggage carried on a jet fighter aircraft. A note after section 6 provides that Royal Australian Air Force Base Tindal is not a first point of entry for any other goods.

Section 6 in the following Determinations:

- Brisbane Airport Determination
- Melbourne Tullamarine Airport Determination
- Perth Airport Determination

provide that the relevant landing places in these Determinations are first points of entry for all goods.

Section 6 in the following Determinations:

- Adelaide Airport Determination
- Avalon Airport Determination
- Cairns Airport Determination
- Canberra Airport Determination
- Darwin Airport and Royal Australian Air Force Base Darwin Determination
- Gold Coast Airport Determination
- Hobart Airport Determination
- Port Hedland Airport Determination
- Royal Australian Air Force Base Amberley Determination
- Royal Australian Air Force Base Edinburgh Determination
- Royal Australian Air Force Base Pearce Determination
- Royal Australian Air Force Base Richmond Determination
- Townsville Airport and Royal Australian Air Force Base Townsville Determination

provide that the relevant landing places in these Determinations are first points of entry for goods other than live horses.

Section 6 of the Newcastle Airport and Royal Australian Air Force Base Williamtown Determination, the HMAS Albatross Naval Air Station Nowra Determination, and the

Sunshine Coast Airport Determination provide that these landing places are first points of entry for baggage and waste. A note after section 6 in these Determinations provides that these landing places are not first points of entry for any other goods.

Section 6 of the Horn Island Airport Determination provides that Horn Island Airport is a first point of entry for baggage, dead crustacea and waste. A note after section 6 provides that this landing place is not first point of entry for any other goods.

Notes in Section 6 direct 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 regarding whether particular goods may be brought into Australian territory.

Part 3 Biosecurity entry points

A biosecurity entry point is a specified area within a first point of entry where an aircraft or goods to which the biosecurity entry point relates must enter as soon as possible. This is an optional tool that can be used to assist with the management of biosecurity risk by ensuring aircraft and goods are brought to a specified place with the facilities to assess and, if necessary, treat biosecurity risk. They may be used for a range of reasons, such as the size and location of the landing place or the types of biosecurity risk associated with the aircraft or goods.

For example, a Director may determine under section 223 of the Biosecurity Act that a landing place to be a first point of entry that can accept live animals, but may also determine that the biosecurity risk associated with live animals needs to be managed at a specific location within the landing place (such as a location with the appropriate facilities to assess and treat biosecurity risk, as well as house animals). Section 224 of the Biosecurity Act enables to the Director to designate that location to be a biosecurity entry point for live animals.

Section 147 of the Biosecurity Act provides that, unless limited exceptions apply, where a biosecurity entry point has been designated for goods, the person in charge of the aircraft must ensure that the goods that are to be unloaded from the aircraft are brought to the biosecurity entry point for those goods as soon as practicable. Section 238 of the Biosecurity Act provides that where a biosecurity entry point has been designated for aircraft at a first point of entry, the relevant aircraft must be brought to that biosecurity entry point as soon as practicable. It is an offence not to comply with the requirements of section 147 and 238 of the Biosecurity Act.

Biosecurity entry points – aircraft

Section 7 in the Determinations contains a note that provides that an aircraft must be brought to a biosecurity entry point at first point of entry if there is one at that first point of entry, and refers the reader to section 228 of the Biosecurity Act. The notes further provide that the relevant Determinations do not designate any area of the relevant landing places as biosecurity entry points for aircraft.

Biosecurity entry points – goods

Section 8 in all the Determinations (except the Royal Australian Air Force Base Learmonth Determination, which is not a first point of entry for goods) designates particular areas within the first point of entry as biosecurity entry points for all goods, or specified goods. Section 8 contains a table, which lists the goods in column 1 and the area which is the biosecurity entry point for those goods in column 2.

Item 1 in the table in the relevant Determinations listed below provides that the following areas are biosecurity entry points for baggage (as defined by section 9 of the Biosecurity Act):

- For Adelaide Airport: Adelaide Airport International Terminal 1; Cobham Aviation Terminal
- For Avalon Airport: Avalon Airport International Terminal
- For Brisbane Airport: Brisbane Airport International Terminal; Jetbase Terminal; Jet Aviation Australia Terminal
- For Cairns Airport: Cairns Airport International Terminal
- For Canberra Airport: Canberra Airport International Terminal; Corporate Air Terminal; VIP Terminal, Defence Establishment Fairbairn
- For Darwin Airport and Royal Australian Air Force Base Darwin: Darwin International Terminal; Careflight International Terminal; Pearl Flight Centre Terminal; Jet Aviation Australia Hangar; Royal Australian Air Force Base Darwin Air Movements Terminal
- For Gold Coast Airport: Gold Coast Airport International Terminal; Platinum Business Aviation Centre Terminal
- For Hobart Airport: Hobart Airport International Terminal
- For HMAS Albatross Naval Air Station Nowra: Air Movements Section ACC
- For Horn Island Airport: Horn Island Airport International Inspection Point
- For Melbourne Tullamarine Airport: Melbourne Tullamarine Airport International Terminal 2; Melbourne Jet Base
- For Newcastle Airport and Royal Australian Air Force Base Williamstown: Newcastle Airport International Terminal; Royal Australian Air Force Base Williamstown Air Movements Terminal
- For Perth Airport: Perth Airport International Terminal 1; Perth Airport International Terminal 3; Jet Aviation Australia Terminal; Pearl Flight Centre Terminal
- For Port Hedland Airport: Port Hedland Airport International Terminal
- For Royal Australian Air Force Base Amberley: Royal Australian Air Force Base Amberley Air Movements Section Passenger Terminal
- For Royal Australian Air Force Base Edinburgh: Royal Australian Air Force Base Edinburgh Air Movements Terminal
- For Royal Australian Air Force Base Pearce: Royal Australian Air Force Base Pearce Air Movements Terminal
- For Royal Australian Air Force Base Richmond: Air Movements Section Passenger Terminal – BLD 300
- For Sunshine Coast Airport: Sunshine Coast Airport International Terminal; Machjet International Terminal
- For Townsville Airport and Royal Australian Air Force Base Townsville: Townsville Airport International Terminal; Royal Australian Air Force Base Townsville Air Movements Terminal

The Royal Australian Air Force Base Tindal Determination provides at Item 1 in the table in section 8 that 75 Squadron Operations is the biosecurity entry point area for baggage carried on a jet fighter aircraft.

In addition to the biosecurity entry points listed above, item 2 in the table in the Determinations listed below provides that the following areas are biosecurity entry points for live horses:

- For Brisbane Airport: Bays L1-L6; Bays 69-72; Bay 87
- For Melbourne Tullamarine Airport: First Point Animal Services Animal Transfer Facility
- For Perth Airport: QANTAS CTO

Note 1 after the table provides that goods listed in the table to be unloaded from an aircraft that has arrived at the landing place must be brought to a biosecurity entry point for those goods as soon as practicable. Note 1 also directs the reader to section 147 of the Biosecurity Act.

Note 2 provides that the relevant Determination does not designate biosecurity entry points for other goods for which the landing place is a first point of entry, so the requirement in section 147 of the Act does not apply to the unloading of those other goods.

Part 4 – Conditions

Section 8 in the RAAF Base Learmonth Determination and Section 9 in the other Determinations provides conditions which relate to notifying the department of certain changes. These conditions must be met by the owners or lessees of the landing place, or by a person or body that is responsible for carrying out operations at the landing place.

Subsection 8(1) in the Royal Australian Air Force Base Learmonth Determination and subsection 9(1) in the other Determinations provides that the determination of the relevant landing place as a first point of entry is subject to the conditions in section 9.

Subsection 8(2) in the Royal Australian Air Force Base Learmonth Determination and subsection 9(2) in the other Determinations provides that owner or owners of the relevant landing place must provide notice in writing to the department of a change to the business entity operating the landing place or a biosecurity entry point at the landing place as soon as practicable after becoming aware of the change.

Subsection 8(3) in the Royal Australian Air Force Base Learmonth Determination and subsection 9(3) in the other Determinations provides that the lessee (if any) or lessees must provide notice in writing to the department of a change to the business entity operating the landing place or a biosecurity entry point at the landing place as soon as practicable after becoming aware of the change.

Subsection 8(4) in the Royal Australian Air Force Base Learmonth Determination and subsection 9(4) in the other Determinations provides that if a person or body that is responsible for carrying out operations at the relevant landing place proposes to make a change referred to in subsection 8(5) in the Royal Australian Air Force Base Learmonth

Determination and subsection 9(5) in the other Determinations, described below, the person must, in writing, give the department reasonable notice of the proposed change.

Subsection 8(5) in the Royal Australian Air Force Base Learmonth Determination and subsection 9(5) in the other Determinations provides the changes referred to in subsection 8(5) in the Royal Australian Air Force Base Learmonth Determination and subsection 9(4) in the other Determinations. These include:

- a change to procedures at the landing place providing biosecurity measures to be taken to manage the level of biosecurity risk (paragraph 9(5)(a));
- a change to the facilities or amenities available at the landing place for biosecurity officials and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act at that landing place (paragraph 9(5)(b));
- a change to the procedures at the landing place that may affect the ability of a person who carries out operations at the landing place to identify associated biosecurity risks;
- a change to procedures at the landing place that may affect the ability for biosecurity officials or human biosecurity officials to be informed of biosecurity risks associated with operations at that landing place (paragraph 9(5)(d));
- a change to procedures at the landing place for managing any other factors that may contribute to, or affect, the level of biosecurity risk associated with operations carried out at that landing place (paragraph 9(5)(e)).