

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Essendon Airport) Determination 2019

Legislative Authority

The *Biosecurity Act 2015* (Biosecurity Act) is about managing 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 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) in relation to a landing place may be made subject to conditions specified in the Determination. 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—Essendon Airport) Determination 2019* (the Determination) is to:

- determine that a specified landing place, being Essendon Airport, is a first point of entry for aircraft generally and for baggage and waste for the purposes of section 223 of the Biosecurity Act;

- designate specified areas of the landing place as biosecurity entry points for the purposes of section 224 of the Biosecurity Act where required; and
- identify the conditions that the Determination 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.

The *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2019* enabled the Director of Biosecurity to vary the period of effect for first point of entry determinations that were made by relying on transitional provisions contained in subitem 1(1) of Schedule 3 to the Transitional Act. The transition period for Essendon Airport was extended for six months, ending on 15 December 2019. The extension reflected the anticipated time needed for the landing place to be fully compliant with the necessary requirements for making determinations for landing places under section 223 of the Biosecurity Act.

For the purposes of the Determination, the Director of Biosecurity was satisfied that Essendon Airport (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 Essendon Airport was to be a first point of entry for the purposes of subsection 223(1) of the Biosecurity Act.

Impact and Effect

The Determination ensures 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 Australia, establish or spread and cause harm to Australia’s human, plant and animal health, the environment and the economy.

Consultation

In considering whether Essendon Airport met the requirements of subsection 223(2) of the Biosecurity Act, the Department of Agriculture (the Department) engaged directly with operators at Essendon Airport over the transition period. The Department conducted onsite visits, exchanged correspondence and undertook ongoing communication with operators to confirm the nature of their operations, assess those operations against regulatory requirements and provide technical and administrative support. The Department sought and received

support by all first point of entry and biosecurity entry point operators, as well as clarification of the activities carried out at those locations. This has informed the decision that Essendon Airport is a first point of entry for aircraft generally, and a first point of entry for baggage and waste. It has also informed the decision about the areas of Essendon Airport that are biosecurity entry points for baggage.

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

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 making biosecurity first point of entry determinations on 9 May 2019.

Details / Operation

Details of the Determination are set out in the Attachment.

Other

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. However, under section 228 of the Biosecurity Act, it is 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 Essendon Airport.

Details of the Biosecurity (First Point of Entry - Essendon Airport) Determination

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the Determination is the *Biosecurity (First Point of Entry - Essendon Airport) Determination 2019* (the Determination).

Section 2 – Commencement

This section provides for the Determination to commence on 16 December 2019.

Section 3 – Authority

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

Section 4 – Definitions

This section provides definitions for terms contained in the Determination. The Determination provides that “Act” means the *Biosecurity Act 2015*. The Determination provides that “aircraft” means an aircraft (as defined in section 9 of the Biosecurity Act) that is subject to biosecurity control. Under section 119 of the Biosecurity Act, goods become subject to biosecurity control when they enter Australian territory.

The Determination provides 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 Determination further provides 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

Section 5 - First point of entry – aircraft

Section 5 of the Determination provides that Essendon Airport is a first point of entry for aircraft generally.

Section 6 - First point of entry – goods

Section 6 of the Determination provides that Essendon Airport is a first point of entry for baggage and waste. Note 1 to section 6 of the Determination provides that Essendon Airport is not a first point of entry for any other goods.

Note 2 to Section 6 directs the reader to sections 173 and 174 of the Biosecurity Act (which deal with prohibited goods and conditionally non-prohibited goods, respectively) and any

determinations made under those sections regarding whether particular goods may be brought into a particular first point of entry.

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 within the first point of entry 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 is 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 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.

Section 7 – Biosecurity entry points – aircraft

Section 7 of the Determination 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 238 of the Biosecurity Act. If there are no biosecurity entry points for a first point of entry, this requirement does not apply to aircraft landing there. The note further provides that the Determination does not designate any area of Essendon Airport as a biosecurity entry point for aircraft.

Section 8 - Biosecurity entry points – goods

Section 8 of the Determination designates particular areas within Essendon Airport as biosecurity entry points for specified goods, being baggage. Section 8 contains a table, which lists the goods in column 1 and the area which is the biosecurity entry point for goods in column 2.

Column 2 of item 1 in the table provides that the following areas are biosecurity entry points for baggage (as defined by section 9 of the Biosecurity Act):

- ExecuJet Terminal
- Hanger 8

- Jet City Hanger
- Air National Australia Hanger
- Luft Aviation Hanger
- Platinum Business Aviation Centre
- Pratt Aviation Hanger
- Shortstop Jet Charter Lounge
- Southern Cross Jets Hanger

Note 1 to the table provides that if an aircraft has arrived at Essendon Airport and is carrying goods listed in the table to be unloaded from an aircraft, those goods must be brought to a biosecurity entry point for those goods as soon as practicable (section 147 of the Biosecurity Act).

Note 2 provides that the Determination does not designate biosecurity entry points for other goods for which Essendon Airport 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. Essendon Airport is a first point of entry for waste, but no biosecurity entry points are designated for waste. Therefore waste does not need to be brought to a specific biosecurity entry point within Essendon Airport.

Part 4 – Conditions

Section 9 – Conditions – notifying the Agriculture Department of changes

Section 9 of the Determination sets out conditions which relate to notifying the Department of certain changes. These conditions must be met by the owners or lessees of Essendon Airport, or by a person or body that is responsible for carrying out operations at Essendon Airport.

Subsection 9(1) of the Determination provides that the determination of Essendon Airport as a first point of entry is subject to the conditions in this section.

Subsection 9(2) of the Determination provides that the owner (or, if there is more than one owner, an owner) of Essendon Airport must provide notice in writing to the Department of a change to the business entity operating Essendon Airport or a biosecurity entry point at Essendon Airport as soon as practicable after becoming aware that the change has occurred or will occur.

Subsection 9(3) of the Determination provides that the lessee (if any, or, if there is more than one lessee, a lessee) of Essendon Airport must provide notice in writing to the Department of a change to the business entity operating Essendon Airport or a biosecurity entry point at Essendon Airport as soon as practicable after becoming aware that the change has occurred or will occur.

Subsection 9(4) of the Determination provides that if a person or body that is responsible for carrying out operations at Essendon Airport proposes to make a change referred to in subsection 9(5), the person or body must, in writing, give the Department reasonable notice of the proposed change.

Subsection 9(5) of the Determination sets out the changes for the purposes of subsection 9(4) of the Determination. These are:

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