

## **EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

*Biosecurity (First Point of Entry—Brisbane West Wellcamp Airport) Determination 2020*

### **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.

Section 224 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—Brisbane West Wellcamp Airport) Determination 2020* (the Determination) is to:

- determine that a specified landing place, being Brisbane West Wellcamp Airport, is a first point of entry for freighter aircraft and for goods carried on a freighter aircraft other than live horses 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**

Brisbane West Wellcamp Airport requested determination as a first point of entry under section 223 of the Biosecurity Act. The Determination relates to freighter aircraft and goods carried on a freighter aircraft, other than live horses.

For the purposes of the Determination, the Director of Biosecurity was satisfied that Brisbane West Wellcamp Airport met the requirements of subsection 223(2) of the Biosecurity Act. The Director of Biosecurity specified that Brisbane West Wellcamp 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 Brisbane West Wellcamp Airport met the requirements of subsection 223(2) of the Biosecurity Act, the Department of Agriculture, Water and the Environment (the Department) engaged directly with the operator at Brisbane West Wellcamp Airport. The Department conducted onsite visits, exchanged correspondence and undertook ongoing communication with the operator 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 from the first point of entry operator, as well as clarification of the activities carried out at the location. This has informed the decision that Brisbane West Wellcamp Airport is a first point of entry for freighter aircraft, and a first point of entry for goods carried on a freighter aircraft other than live horses. It has also informed the decision that no areas of Brisbane West Wellcamp Airport are designated as biosecurity entry points.

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. As such, a Statement of Compatibility with Human Rights is not required (subsection 15J(2) of the *Legislation Act 2003* refers). The decision to make a determination under subsection 223(1) of the Biosecurity Act is a technical and scientific decision to ensure biosecurity risk associated with freighter aircraft and goods carried on that aircraft can be satisfactorily managed at Brisbane West Wellcamp Airport.

**Details of the Biosecurity (First Point of Entry - Brisbane West Wellcamp Airport) Determination**

Part 1 Preliminary

**Section 1 – Name**

This section provides that the name of the Determination is the *Biosecurity (First Point of Entry - Brisbane West Wellcamp Airport) Determination 2020* (the Determination).

**Section 2 – Commencement**

This section provides for the Determination to commence on the day after the instrument is registered.

**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 191 of the Biosecurity Act, aircraft 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. Under section 119 of the Biosecurity Act, goods become subject to biosecurity control when they enter Australian territory.

Part 2 - First point of entry

**Section 5 - First point of entry – aircraft**

Section 5 of the Determination provides that Brisbane West Wellcamp Airport is a first point of entry for freighter aircraft.

A note after section 5 provides that Brisbane West Wellcamp Airport is not a first point of entry for any other aircraft.

**Section 6 - First point of entry – goods**

Section 6 of the Determination provides that Brisbane West Wellcamp Airport is a first point of entry for goods carried on a freighter aircraft other than live horses. A note after 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. Based on the Department's assessment of Brisbane West Wellcamp Airport's operations, biosecurity entry points were not considered necessary for the classes of aircraft and goods arriving at the airport. In particular, in this Determination it was deemed unnecessary to designate a biosecurity entry point for baggage that may arrive on a freighter aircraft as the baggage does not need to be inspected at a specific place within the first point of entry. Accordingly, no biosecurity entry points are included in the Determination.

#### **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 Brisbane West Wellcamp Airport as a biosecurity entry point for aircraft.

#### **Section 8 - Biosecurity entry points – goods**

Section 8 of the Determination contains a note that provides that goods 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 147 of the Biosecurity Act. If there are no biosecurity entry points for a first point of entry, this requirement does not apply to goods unloaded there. The note further provides that the Determination does not designate any area of Brisbane West Wellcamp Airport as a biosecurity entry point for goods. Therefore the requirement does not apply.

### 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 Brisbane West Wellcamp Airport, or by a person or body that is responsible for carrying out operations at Brisbane West Wellcamp Airport.

Subsection 9(1) of the Determination provides that the determination of Brisbane West Wellcamp 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 Brisbane West Wellcamp Airport must provide notice in writing to the Department of a change to the business entity operating Brisbane West Wellcamp 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 Brisbane West Wellcamp Airport must provide notice in writing to the Department of a change to the business entity operating Brisbane West Wellcamp 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 Brisbane West Wellcamp 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 Brisbane West Wellcamp Airport providing for biosecurity measures to be taken to manage the level of biosecurity risk associated with operations carried out at Brisbane West Wellcamp Airport (paragraph 9(5)(a));
- a change to the facilities or amenities available at Brisbane West Wellcamp Airport for biosecurity officials and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act at Brisbane West Wellcamp Airport (paragraph 9(5)(b));
- a change to the procedures at Brisbane West Wellcamp Airport that may affect the ability of a person who carries out operations at Brisbane West Wellcamp Airport to identify associated biosecurity risks (paragraph 9(5)(c));
- a change to procedures at Brisbane West Wellcamp Airport that may affect the ability for biosecurity officials or human biosecurity officials to be informed of biosecurity risks associated with operations carried out at Brisbane West Wellcamp Airport (paragraph 9(5)(d));
- a change to procedures at Brisbane West Wellcamp Airport for managing any other factors that may contribute to, or affect, the level of biosecurity risk associated with operations carried out at Brisbane West Wellcamp Airport (paragraph 9(5)(e)).