

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Broome International 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—Broome International Airport) Determination 2020* (the Determination) are to:

- determine that a specified landing place, being Broome International Airport, is a first point of entry for aircraft generally and for goods 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 is 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 Broome International Airport was extended for twelve months, ending on 15 June 2020. 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 Broome International 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 Broome International Airport was to be a first point of entry for aircraft generally, and a first point of entry for goods other than live horses 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 at Broome International Airport 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 Broome International 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 operators at Broome International Airport over the four year transition period.

The Department engaged with the operators at Broome International Airport by conducting onsite visits to assess facilities and operations against regulatory requirements, and undertaking formal correspondence and ongoing communication to confirm the nature of their operations and to provide advice and support regarding meeting the regulatory requirements.

The information gathered from onsite visits and from the operators has informed the decision by the delegate of the Director of Biosecurity that Broome International Airport is a first point of entry for aircraft generally, and a first point of entry for goods other than live horses. It has also informed the decision that the areas known as Cobham Hangar and International Charter Processing Point at Broome International Airport have been determined biosecurity entry points for baggage.

The Department of Health has also been consulted in relation to the Determination and provided a letter of support on 9 June 2020.

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 section 42 (disallowance) does not apply as provided for under section 228 of the Biosecurity Act. 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 aircraft and goods other than live horses can be satisfactorily managed at Broome International Airport.

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

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the Determination is the *Biosecurity (First Point of Entry – Broome International Airport) Determination 2020* (the Determination).

Section 2 – Commencement

This section provides for the Determination to commence on 16 June 2020.

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 Broome International Airport is a first point of entry for aircraft generally.

Section 6 - First point of entry – goods

Section 6 of the Determination provides that Broome International Airport is a first point of entry for goods other than live horses.

The note 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 of Biosecurity or a Director of Human Biosecurity (or delegate) may determine under section 223 of the Biosecurity Act that a landing place is a first point of entry that can accept baggage, but may also determine that the biosecurity risk associated with baggage needs to be managed at a specific location within the landing place (such as a location with the appropriate facilities to assess and treat the biosecurity risk associated with baggage). Section 224 of the Biosecurity Act enables the Director or delegate to designate that location to be a biosecurity entry point for baggage.

Section 147 of the Biosecurity Act provides that, unless limited exceptions apply, where a biosecurity entry point has been designated for goods that are to be unloaded from an aircraft or vessel, 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. Civil penalties and fault-based offences apply for contraventions of sections 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 aircraft at 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 Broome International Airport as a biosecurity entry point for aircraft.

Section 8 - Biosecurity entry points – goods

Section 8 of the Determination designates particular areas within Broome International 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 within Broome International Airport which is the biosecurity entry point for goods in column 2.

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

- Cobham Hangar; and
- International Charter Processing Point.

Note 1 to the table provides that if an aircraft has arrived at Broome International 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 Broome International 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. Broome International Airport is a first point of entry for goods other than live horses, but no biosecurity entry points are designated for goods such as waste. Therefore, waste does not need to be brought to a specific biosecurity entry point within Broome International 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 Broome International Airport, or by a person or body that is responsible for carrying out operations at Broome International Airport.

Subsection 9(1) of the Determination provides that the determination of Broome International Airport as a first point of entry by this instrument 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 Broome International Airport must provide notice in writing to the Department of a change to the business entity operating Broome International Airport or a biosecurity entry point at Broome International 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 Broome International Airport must provide notice in writing to the Department of a change to the business entity operating Broome International Airport or a biosecurity entry point at Broome International 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 Broome International 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 Broome International Airport providing for biosecurity measures to be taken to manage the level of biosecurity risk associated with operations carried out at Broome International Airport (paragraph 9(5)(a));
- a change to the facilities or amenities available at Broome International Airport for biosecurity officials and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act at Broome International Airport (paragraph 9(5)(b));

- a change to the procedures at Broome International Airport that may affect the ability of a person who carries out operations at Broome International Airport to identify associated biosecurity risks (paragraph 9(5)(c));
- a change to procedures at Broome International Airport that may affect the ability for biosecurity officials or human biosecurity officials to be informed of identified biosecurity risks associated with operations at Broome International Airport (paragraph 9(5)(d));
- a change to procedures at Broome International Airport for managing any other factors that may contribute to, or affect, the level of biosecurity risk associated with operations carried out at Broome International Airport (paragraph 9(5)(e)).