

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Port of Darwin) Amendment (Non-commercial Vessels) Determination 2020

Legislative Authority

The *Biosecurity (First Point of Entry—Port of Darwin) Amendment (Non-commercial Vessels) Determination 2020* (Amendment Determination) is made under section 233 of the *Biosecurity Act 2015* (the Biosecurity Act).

The Amendment Determination makes amendments to the *Biosecurity (First Point of Entry—Port of Darwin) Determination 2019* (the Port of Darwin Determination). The Port of Darwin Determination is made under subsection 229(1) of the Biosecurity Act.

Section 233 of the *Biosecurity Act 2015* (Biosecurity Act) provides that if a determination is made under subsection 229(1) in relation to a port, the Director who made the determination may vary or revoke the determination, or vary the conditions specified in the determination (including by imposing new conditions), if the Director is satisfied of any of the matters set out in paragraphs 233(a) – (e) of the Biosecurity Act. Paragraph 233(e) provides that one of these matters is that a circumstance prescribed by the regulations has occurred. Paragraph 59(c) of the *Biosecurity Regulation 2016* (the Biosecurity Regulation) provides that a circumstance in which the Director may vary a determination under subsection 233 of the Biosecurity Act in relation to a port is that the operator of the port has requested the variation or the revocation of the determination, or the variation of the conditions. An operator at Port of Darwin has requested a variation to the Port of Darwin Determination.

Purpose

The purpose of the Amendment Determination is to vary the Port of Darwin Determination to permit an additional class of vessel and additional classes of goods, namely non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste. The Amendment Determination also varies the Port of Darwin Determination to designate biosecurity entry points for this class of vessel and these classes of goods.

Background

The 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 in section 9 of the Biosecurity Act.

When the Port of Darwin Determination commenced on 16 December 2019, no operators at the port had met the regulatory requirements deemed necessary for a port to be determined as

an FPOE for non-commercial vessels. As a result, the Port of Darwin Determination provided that the Port of Darwin was an FPOE for vessels other than non-commercial vessels.

The Director of Biosecurity may vary the Port of Darwin Determination if a circumstance prescribed in the regulations has occurred: see paragraph 233(e) of the Biosecurity Act. For the purposes of the Amendment Determination, the Director of Biosecurity was satisfied that a circumstance prescribed by the Biosecurity Regulation has occurred. Specifically, the operator at Port of Darwin requested a variation to the Port of Darwin Determination, in accordance with paragraph 59(c) of the Biosecurity Regulation.

Impact and Effect

The Amendment Determination makes the Port of Darwin a first point of entry for non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste. As a result, the person in charge or operator of a non-commercial vessel is no longer required to apply to the Department of Agriculture, Water and the Environment (Agriculture Department) for prior permission to moor at Port of Darwin or to unload non-commercial vessel baggage or non-commercial vessel waste.

The Amendment Determination ensures that vessels 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. Vessels or goods arriving at a port that is not a first point of entry for those vessels or goods, 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 to make the Amendment Determination so that the Port of Darwin is a first point of entry for non-commercial vessels, as well as non-commercial vessel baggage and non-commercial vessel waste, the Agriculture Department engaged directly with the operator of Cullen Bay Pontoon, the designated biosecurity entry point for this class of vessel and these classes of goods at the port.

Commencing in 2017, the Agriculture Department conducted onsite visits, exchanged correspondence and undertook ongoing communication with the operator to confirm the nature of their operations, assess those operations and provide technical and administrative support.

The information gathered from onsite visits and from the operator has informed the decision that the Port of Darwin Determination be varied so that Port of Darwin is a first point of entry for non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste. It has also informed the decision that the Port of Darwin Determination be varied so that Cullen Bay Pontoon is the biosecurity entry point listed for non-commercial vessels, non-commercial vessel baggage and non-commercial vessel waste.

The Department of Health has also been consulted in relation to the Amendment Determination and provided a letter of support on 25 March 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). The OBPR advised on 31 March 2016 that a RIS is not required for the making of determinations under section 229 of the Act. Further to this OBPR confirmed this advice in the context of amending determinations under section 233 of the Biosecurity Act on 30 May 2019.

Details / Operation

Details of the Amendment Determination are set out in the Attachment.

Other

Paragraph 234(b) of the Biosecurity Act provides that the Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act) and the instrument is not subject to disallowance. As such, a Statement of Compatibility with Human Rights is not required (subsection 15J(2) of the Legislation Act refers). The decision to vary the Port of Darwin Determination under section 233 of the Biosecurity Act is a technical and scientific decision to ensure biosecurity risk associated with non-commercial vessels and non-commercial vessel baggage and non-commercial vessel waste can be satisfactorily managed at Port of Darwin.

Biosecurity (First Point of Entry—Port of Darwin) Amendment (Non-commercial Vessels) Determination 2020

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (First Point of Entry—Port of Darwin) Amendment (Non-commercial Vessels) Determination 2020* (the Amendment Determination).

Section 2 – Commencement

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

Section 3 – Authority

This section provides that the Amendment Determination is made under section 233 of the *Biosecurity Act 2015*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Amendment Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Biosecurity (First Point of Entry—Port of Darwin) Determination 2019

The Schedule sets out the amendments made to the *Biosecurity (First Point of Entry—Port of Darwin) Determination 2019* (the Port of Darwin Determination).

1 Section 5

Item 1 amends section 5 of the Port of Darwin Determination to omit “other than non-commercial vessels” and substitute “generally”.

This amendment makes the Port of Darwin an FPOE for vessels generally, including non-commercial vessels.

2 Section 6

Item 2 repeals and substitutes section 6 of the Port of Darwin Determination so that it now provides:

6 First point of entry—goods

Port of Darwin is a first point of entry for goods other than live horses.

Note: For other matters relating to whether particular goods may be brought into a particular first point of entry, see sections 173 and 174 of the Act (which deal with prohibited goods and conditionally non-prohibited goods) and any determinations made under those sections.

The effect of this amendment is that the Port of Darwin is now an FPOE for goods including non-commercial vessel baggage and non-commercial vessel waste.

3 Section 7 (before table item 1)

Item 3 amends section 7 of the Port of Darwin Determination to insert the following text before table item 1:

1A	Non-commercial vessels	Cullen Bay Pontoon
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The effect of this amendment is that Cullen Bay Pontoon is a biosecurity entry point for non-commercial vessels (such as private yachts) within the Port of Darwin.

A biosecurity entry point is a specified area within a first point of entry, where vessels 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 vessels 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.

4 Section 8 (before table item 1)

Item 4 amends section 8 of the Port of Darwin Determination to insert the following before table item 1:

1A	Non-commercial vessel baggage	Cullen Bay Pontoon
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The effect of this amendment is that Cullen Bay Pontoon is a biosecurity entry point for non-commercial vessel baggage within the Port of Darwin.

5 Section 8 (cell at table item 1, column 1)

Item 5 amends section 8 of the Port of Darwin Determination to repeal the cell at table item 1, column 1 and substitute the following:

Baggage other than non-commercial vessel baggage
or passenger vessel baggage

This amendment clarifies that the areas specified in paragraphs (a) – (k) of column 2 in item 1 are biosecurity entry points for baggage other than non-commercial vessel baggage or passenger vessel baggage.

6 Section 8 (after table item 5)

Item 6 amends section 8 of the Port of Darwin Determination to insert the following after table item 5:

5A	Non-commercial vessel waste	Cullen Bay Pontoon
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The effect of this amendment is that Cullen Bay Pontoon is a biosecurity entry point for non-commercial vessel waste within the Port of Darwin.

7 Section 8 (table item 6, column 1)

Item 7 amends section 8 of the Port of Darwin Determination to omit “Waste” and substitute “Waste other than non-commercial vessel waste” in table item 6, column 1.

This is a consequential amendment to the amendment made by item 6 above, which provides that Cullen Bay Pontoon is a biosecurity entry point for non-commercial vessel waste. This amendment clarifies that the areas specified in paragraphs (a) – (g) of column 2 in item 6 are biosecurity entry points for waste other than non-commercial vessel waste.