

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Port of Esperance) Amendment (2021 Measures No. 1) Determination 2021

Legislative Authority

The *Biosecurity (First Point of Entry—Port of Esperance) Amendment (2021 Measures No. 1) Determination 2021* (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 Esperance) Determination 2019* (Port of Esperance Determination). The Port of Esperance Determination is made under subsection 229(1) of the Biosecurity Act.

Section 233 of the 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. The operator at Port of Esperance has requested variations to the Port of Esperance Determination.

Purpose

The purpose of the Amendment Determination is to vary the Port of Esperance Determination to:

- determine Port of Esperance as a first point of entry for freight containers.
- add ‘Berth 2’ as a biosecurity entry point for freight containers.
- add ‘Berth 1’ as a biosecurity entry point for inorganic bulk 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.

The Director of Biosecurity may vary the Port of Esperance 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 Esperance requested variations to the Port of Esperance Determination, in accordance with paragraph 59(c) of the Biosecurity Regulation.

Impact and Effect

The Amendment Determination varies the Port of Esperance Determination to:

- Determine Port of Esperance as a first point of entry for freight containers. As a result, the person in charge or operator of a vessel is no longer required to apply to the Department of Agriculture, Water and the Environment (Agriculture Department) for prior permission to unload freight containers at Port of Esperance.
- Add 'Berth 2' as a biosecurity entry point for freight containers. Berth 2 is the only biosecurity entry point for freight containers at the Port of Esperance. As a result, the person in charge or operator of a vessel must ensure that any freight containers to be unloaded are brought to 'Berth 2' as soon as practicable. The only exceptions to this are if a biosecurity officer has given a direction under subsection 147(3) of the Biosecurity Act requiring the goods to be brought to an alternative biosecurity entry point, or if permission has been given under subsection 148(2) of the Biosecurity Act to bring the goods to an alternative biosecurity entry point.
- Add 'Berth 1' as a biosecurity entry point for inorganic bulk goods. As a result, the person in charge or operator of a vessel is no longer required to apply to the Agriculture Department for prior permission to unload inorganic bulk goods at Berth 1 at the Port of Esperance. Berth 2 is also a biosecurity entry point for inorganic bulk goods.

The Amendment Determination ensures that goods that arrive in Australian territory from overseas arrive at locations that have the facilities available to assess any biosecurity risk associated with those goods and manage it to an acceptable level. Goods arriving at locations that do 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 to vary biosecurity entry points at the Port of Esperance, the Agriculture Department engaged directly with the operator of the relevant biosecurity entry points.

The Agriculture Department conducted onsite visits to the first point of entry, 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 and evidence gathered from onsite visits and from the operator has informed the decision that the Port of Esperance Determination be varied so that:

- Port of Esperance is a first point of entry for freight containers.
- ‘Berth 2’ is a biosecurity entry point for freight containers.
- ‘Berth 1’ is a biosecurity entry point for inorganic bulk goods.

Berth 2 is designated in the Port of Esperance Determination as a biosecurity entry point for general goods. As freight containers may be empty or may contain goods, the operators of areas designated as biosecurity entry points for freight containers are required to demonstrate that the biosecurity risk of freight containers and of general goods can be managed to an acceptable level at the site. This has been demonstrated by the operator of the Port of Esperance.

The Department of Health has also been consulted in relation to the Amendment Determination. A delegate of the Director of Human Biosecurity provided a letter of endorsement on 12 March 2021.

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. The 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 Esperance Determination under section 233 of the Biosecurity Act is a technical and scientific decision to ensure biosecurity risk associated with vessels and goods can be satisfactorily managed at Port of Esperance.

Biosecurity (First Point of Entry—Port of Esperance) Amendment (2021 Measures No. 1) Determination 2021

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (First Point of Entry—Port of Esperance) Amendment (2021 Measures No. 1) Determination 2021* (the Amendment Determination).

Section 2 – Commencement

This section provides for the Amendment Determination to commence on the day after it 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 Esperance) Determination 2019

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

1 Section 4

Item 1 amends section 4, inserting the following text after the definition of *Act*:

freight container means a re-usable container:

- (a) that is designed to be used to transport goods by one or more modes of transport; and
- (b) that can be transferred from one mode of transport to another without unloading the goods from the container; and
- (c) that is known as a 20-foot-long container or a 40-foot-long container.

This is a consequential amendment to item 2 below which provides that Port of Esperance is now a first point of entry for freight containers. A definition of this class of goods is therefore

required in the Port of Esperance Determination. The definition of ‘freight container’ applies to both empty freight containers and freight containers carrying goods.

2 After paragraph 6(a)

Item 2 amends section 6 to insert the following text after paragraph 6(a):

(aa) freight containers;

The effect of this amendment is that Port of Esperance is now a first point of entry for freight containers. The operator of Port of Esperance requested that the port be determined as a first point of entry for freight containers. The delegate of the Director of Biosecurity was satisfied that there would be an acceptable level of biosecurity risk associated with these operations at Port of Esperance.

3 Section 8 (table item 2)

Item 3 repeals table item 2 of section 8 and substitutes the following:

2	Inorganic bulk goods	The following areas: (a) Berth 1; (b) Berth 2
3	All of the following: (a) freight containers; (b) general goods	Berth 2

This effect of this amendment is that Berth 1 and Berth 2 are biosecurity entry points for inorganic bulk goods and that Berth 2 is a biosecurity entry point for freight containers and general goods. Berth 2 was already designated as a biosecurity entry point for inorganic bulk goods and general goods in the Port of Esperance Determination. The operator of the biosecurity entry points requested that Berth 1 be designated as a biosecurity entry point for inorganic bulk goods and that Berth 2 be designated as a biosecurity entry point for freight containers. The delegate of the Director of Biosecurity was satisfied that there would be an acceptable level of biosecurity risk associated with these operations at Port of Esperance.

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.