

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Cocos (Keeling) Islands Airport) Determination 2021

Legislative Authority

The *Biosecurity (First Point of Entry—Cocos (Keeling) Islands Airport) Determination 2021* (the Determination) is made under section 223 of the *Biosecurity Act 2015* (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 purpose of the *Biosecurity (First Point of Entry—Cocos (Keeling) Islands Airport) Determination 2019* (the Determination) is to:

- determine that a specified landing place, being Cocos (Keeling) Islands 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 Cocos (Keeling) Islands Airport 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 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 *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 Cocos (Keeling) Islands Airport was extended for twenty-four months, ending on 15 June 2021. 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 Cocos (Keeling) Islands 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 Cocos (Keeling) Islands 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:

- Determines that Cocos (Keeling) Islands Airport is a first point of entry for aircraft generally and for goods other than live horses.
- Designates Cocos (Keeling) Islands Airport International Terminal as a biosecurity entry point for baggage. Cocos (Keeling) Islands Airport International Terminal is the only biosecurity entry point for baggage at Cocos (Keeling) Islands Airport. As a result, the person in charge or operator of an aircraft must ensure that any baggage to be unloaded is brought to Cocos (Keeling) Islands Airport International Terminal as soon as practicable. The only exceptions to this are if a biosecurity officer has given a

direction under section 147 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 of the Biosecurity Act to bring the goods to an alternative biosecurity entry point.

- Identifies that the Determination is subject to conditions regarding notifying the Agriculture Department of certain changes at Cocos (Keeling) Islands Airport, in accordance with section 225 of the Biosecurity Act.

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 does not have the capacity to manage the biosecurity risk pose a threat that a disease or pest may enter Australian territory, establish or spread and cause harm to human, plant and animal health.

Consultation

In considering whether Cocos (Keeling) Islands 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 operators of Cocos (Keeling) Islands 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 the landing place and biosecurity entry point. This has informed the decision that Cocos (Keeling) Islands Airport is a first point of entry for all aircraft, and a first point of entry for goods other than horses. It has also informed the decision that Cocos (Keeling) Islands Airport International Terminal is a biosecurity entry point for baggage.

The Department of Health has also been consulted in relation to the Determination. A delegate of the Director of Human Biosecurity provided a letter of endorsement on 27 May 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). 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

Section 228 of the Biosecurity Act provides that the 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).

Details of the Biosecurity (First Point of Entry - Cocos (Keeling) Islands Airport) Determination

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the Determination is the *Biosecurity (First Point of Entry - Cocos (Keeling) Islands Airport) Determination 2021* (the Determination).

Section 2 – Commencement

This section provides for the Determination to commence on 16 June 2021.

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 Cocos (Keeling) Islands Airport is a first point of entry for aircraft generally.

Section 6 - First point of entry – goods

Section 6 of the Determination provides that Cocos (Keeling) Islands 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 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 inspect baggage and to assess and treat biosecurity risk). Section 224 of the Biosecurity Act enables the Director 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, 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 Cocos (Keeling) Islands Airport as a biosecurity entry point for aircraft.

Section 8 - Biosecurity entry points – goods

Section 8 of the Determination designates a particular area within Cocos (Keeling) Islands Airport as a biosecurity entry point for specified goods, being baggage. Section 8 contains a table, which lists baggage as the class of goods in column 1 and Cocos (Keeling) Islands Airport International Terminal as the area which is the biosecurity entry point for those goods in column 2.

Note 1 to the table provides that if an aircraft has arrived at Cocos (Keeling) Islands 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). Therefore, any baggage to be unloaded from an aircraft must be brought to Cocos (Keeling) Islands Airport International Terminal.

Note 2 provides that the Determination does not designate biosecurity entry points for other goods for which Cocos (Keeling) Islands 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. The only class of goods for which a biosecurity entry point is designated at Cocos (Keeling) Islands Airport is baggage. Therefore, other goods that are permitted to be unloaded at Cocos (Keeling) Islands Airport do not need to be brought to a specific biosecurity entry point within the landing place.

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 Cocos (Keeling) Islands Airport, or by a person or body that is responsible for carrying out operations at Cocos (Keeling) Islands Airport.

Subsection 9(1) of the Determination provides that the determination of Cocos (Keeling) Islands 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 Cocos (Keeling) Islands Airport must provide notice in writing to the Department of a change to the business entity operating Cocos (Keeling) Islands Airport or a biosecurity entry point at Cocos (Keeling) Islands 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 Cocos (Keeling) Islands Airport must provide notice in writing to the Department of a change to the business entity operating Cocos (Keeling) Islands Airport or a biosecurity entry point at Cocos (Keeling) Islands 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 Cocos (Keeling) Islands 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 Cocos (Keeling) Islands Airport providing for biosecurity measures to be taken to manage the level of biosecurity risk associated with operations carried out at Cocos (Keeling) Islands Airport (paragraph 9(5)(a));
- a change to the facilities or amenities available at Cocos (Keeling) Islands Airport for biosecurity officials and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act at Cocos (Keeling) Islands Airport (paragraph 9(5)(b));
- a change to the procedures at Cocos (Keeling) Islands Airport that may affect the ability of a person who carries out operations at Cocos (Keeling) Islands Airport to identify associated biosecurity risks (paragraph 9(5)(c));

- a change to procedures at Cocos (Keeling) Islands Airport that may affect the ability for biosecurity officials or human biosecurity officials to be informed of biosecurity risks associated with operations at Cocos (Keeling) Islands Airport (paragraph 9(5)(d)):
- a change to procedures at Cocos (Keeling) Islands Airport for managing any other factors that may contribute to, or affect, the level of biosecurity risk associated with operations carried out at Cocos (Keeling) Islands Airport (paragraph 9(5)(e)).