

## **EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

*Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021*

### **Legislative Authority**

The *Biosecurity Act 2015* (the Act) provides the regulatory framework for the management of diseases and pests that may cause harm to human, animal or plant health, the environment, or the economy.

Subsection 395(1) of the Act provides that the Director of Biosecurity (the Director) may determine that a specified area in Australia is a biosecurity activity zone if:

- the area is a place where powers are exercised or functions or duties are performed by, or on behalf of, the Commonwealth under the Act; and
- the Director is satisfied it is necessary to make the determination for the purpose of managing biosecurity risks associated with the exercise of those powers or the performance of those functions or duties.

Subsection 395(4) of the Act provides that a determination made under subsection 395(1) is a legislative instrument. Subsection 395(5) of the Act provides that a determination is in force until it is revoked under section 398.

Section 398 of the Act provides that the Director must revoke a biosecurity activity zone determination if the Director is satisfied that it is no longer necessary for powers to be exercised in, or in relation to, the zone in accordance with section 399 of the Act.

### **Purpose**

The purpose of the *Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021* (the Determination) is to repeal the *Biosecurity (Biosecurity Activity Zones) Determination 2016* (the 2016 Determination). This is because a number of areas specified as biosecurity activity zones in the 2016 Determination are no longer intended to be biosecurity activity zones for the purposes of the Act. The 2016 Determination will be replaced by the *Biosecurity (Biosecurity Activity Zones) Determination 2021* (the 2021 Determination).

### **Background**

The Department of Agriculture, Water and the Environment (the department) and the Department of Health co-administer the Act, which establishes the framework for biosecurity risk management. The detail and specific information requirements for certain activities under the Act are provided for in the *Biosecurity Regulation 2016* and other delegated legislation.

The 2016 Determination was made on 24 May 2016 and specifies three areas as biosecurity activity zones. These areas are the department quarantine facility at Mickleham, Victoria; the

department quarantine facility at Spotswood, Victoria; and the department quarantine facility at Torrens Island, South Australia. The department has ceased operating quarantine facilities from the Torrens Island and Spotswood locations and they are no longer locations where powers are exercised or functions or duties are performed by, or on behalf of, the Commonwealth where additional powers are necessary to manage biosecurity risks. Consequently, it is no longer necessary for the areas to be specified to be biosecurity activity zones. Further, approximately 70 hectares of land on which the Mickleham department quarantine facility is situated is not occupied by the department and no longer needs to be specified to be a biosecurity activity zone.

Under section 398 of the Act, the Director must revoke a biosecurity activity zone determination if the Director is satisfied that it is no longer necessary for the powers described in Division 3 of Part 7 of Chapter 6 of the Act (relating to powers that may be exercised in biosecurity activity zones) to be exercised to manage biosecurity risks in, or in relation to, the zone.

### **Impact and Effect**

The Determination will repeal the 2016 Determination. The areas specified to be biosecurity activity zones in the 2016 Determination will no longer be biosecurity activity zones. The 2016 Determination will be replaced by the 2021 Determination, which commences at the time this Determination is made.

### **Consultation**

Consultation with the head (however described) of the State or Territory body that is responsible for the administration of matters relating to biosecurity in each State or Territory in which the biosecurity activity zone will lie, is required by subsection 396(1) of the Act. However under subsection 396(2), a failure to consult does not affect the validity of the determination. The department has corresponded with Agriculture Victoria and the South Australian Department of Primary Industries and Regions in relation to the Determination.

Public consultation is not necessary as the Determination relates to the management of Commonwealth premises.

The Office of Best Practice Regulation (OBPR) has advised that the Determination is exempt from the Regulation Impact Statement Preliminary Assessment (RIS) process (OBPR Ref: 21-01212). Accordingly, a RIS has not been conducted for the Determination.

### **Details/Operation**

Details of the Determination are set out in [Attachment A](#).

This Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act). Subsection 398(2) of the Act provides that the Determination is not subject to disallowance. It is appropriate for the Determination to be exempt from disallowance because the decision that it is no longer necessary for biosecurity activity zone powers to be exercised in, or in relation to, a zone relies on specific technical, operational and scientific knowledge as well as the exercise of judgement by the Director.

The Director may only be satisfied of this matter by reference to current detailed knowledge of the activities of the department and their associated biosecurity risks. Specific knowledge of the locations where powers are exercised or functions or duties are performed by, or on behalf of, the Commonwealth under the Act is required. If the Director is satisfied that it is no longer necessary for biosecurity activity zone powers to be exercised in, or in relation to, a zone, subsection 398(1) of the Act mandates that the biosecurity activity zone determination be revoked.

As such, it is appropriate that this Determination is exempt from disallowance due to the nature of the instrument. As the Determination is exempt from disallowance, a Statement of Compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

In accordance with subsection 398(3) of the Act, the Determination commences immediately after it is made.

**Details of the *Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021***

**Section 1—Name**

This section provides that the name of the legislative instrument is the *Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021* (the Determination).

**Section 2—Commencement**

This section provides that the Determination commences immediately after it is made, in accordance with subsection 398(3) of the *Biosecurity Act 2015* (the Act).

Note 1 following subsection 2(1) explains that the table relates only to the provisions of this instrument as originally made. The table will not be amended to deal with any later amendments of the Determination.

Note 2 following subsection 2(1) explains that a revocation of a biosecurity activity zone determination takes effect immediately after it is made (see subsection 398(3) of the Act).

**Section 3—Authority**

This section provides that the Determination is made under subsection 398(1) of the Act.

**Section 4—Schedules**

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

## Schedule 1—Repeals

### *Biosecurity (Biosecurity Activity Zones) Determination 2016*

#### **Item 1 The whole of the instrument**

The *Biosecurity (Biosecurity Activity Zones) Determination 2016* (the 2016 Determination) currently specifies the following areas as biosecurity activity zones:

- Mickleham, Victoria
  - The area is the land in folio identifier 2/LP202576J at Mickleham, City of Hume, County of Bourke, Victoria (known as 135 Donnybrook Road, Mickleham, Victoria);
- Spotswood, Victoria
  - The area is the land being Crown Allotments 64 and 66 Section 7 respectively Parish of Cut-Paw-Paw in Victoria being the whole of the land comprised in Certificates of Title Volume 7720 Folio 33 and Volume 9971 Folio 289 (known as 43 Craig Street, Spotswood, Victoria), excluding the land and any buildings at 47 Craig Street;
- Torrens Island, South Australia
  - The area is the portion of land comprised in Certificate of Title Volume 6132 Folio 765 being portion of allotment 302 in the area named Torrens Island in the Hundred of Port Adelaide, South Australia (known as Torrens Island Avian Quarantine Facility, Grand Trunkway, Gillman, South Australia).

The areas specified in Spotswood, Victoria and Torrens Island, South Australia are no longer occupied by the Department of Agriculture, Water and the Environment (the department), and approximately 70 hectares of the area specified in Mickleham, Victoria, are no longer occupied by the department. As such, these are no longer places where biosecurity powers, functions and duties will be carried out by or on behalf of the Commonwealth under the Act.

Under subsection 398(1) of the Act, the Director must revoke a biosecurity activity zone determination if the Director is satisfied that it is no longer necessary for powers to be exercised in, or in relation to, the zone in accordance with section 399. This item repeals the whole of the 2016 Determination. Subsection 398(3) of the Act provides that a revocation of a biosecurity activity zone determination takes effect immediately after it is made.

The Determination will be replaced by the *Biosecurity (Biosecurity Activity Zones) Determination 2021*, which commences at the time this Determination is revoked.