

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Port of Christmas Island) Determination 2022

Legislative Authority

The *Biosecurity (First Point of Entry—Port of Christmas Island) Determination 2022* (the Determination) is made under subsection 229(1) of the *Biosecurity Act 2015* (the Biosecurity Act).

Subsection 229(1) of the Biosecurity Act provides that the Director of Biosecurity or the Director of Human Biosecurity may determine that a specified port in Australian territory is a first point of entry (as defined in section 18 of the Biosecurity Act) for any of the following:

- vessels generally, or a specified class of vessels 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 229(2) of the Biosecurity Act provides that the Director of Biosecurity or the Director of Human Biosecurity may make a determination under subsection 229(1) in relation to a port 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 port are met and the level of biosecurity risk associated with operations carried out at the port is acceptable.

Subsection 230(1) of the Biosecurity Act provides that a determination under subsection 229(1) in relation to a port may designate a specified area of the port as a biosecurity entry point for any of the following:

- vessels generally, or a specified class of vessels that are subject to biosecurity control;
- 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 231(1) of the Biosecurity Act provides that a determination under subsection 229(1) in relation to a port may be made subject to conditions specified in the determination.

Subsection 231(2) of the Biosecurity Act provides that without limiting subsection 231(1), the conditions may relate to an owner or lessee of the port, a person or body that is responsible for carrying out operations at the port or/and the operations carried out at the port.

Subsection 7(1) of the Biosecurity Act states that the Act applies to Christmas Island.

Subsection 12(a) of the Biosecurity Act provides that a reference in a provision of the Biosecurity Act to ‘Australian territory’ is a reference to ‘Australia, Christmas Island, Cocos (Keeling) Islands and any external Territory to which that provision extends.

Purpose

The purpose of the Determination is to:

- determine that the Port of Christmas Island is a first point of entry for vessels other than passenger vessels for the purposes of subsection 229(1) of the Biosecurity Act;
- determine that the Port of Christmas Island is a first point of entry for the following classes of goods, for the purposes of subsection 229(1) of the Biosecurity Act:
 - baggage other than passenger vessel baggage,
 - freight containers,
 - general goods,
 - non-commercial vessel waste,
 - waste unloaded from vessels operated by Australian Border Force and Royal Australian Navy;
- designate specified areas of the Port of Christmas Island as biosecurity entry points for the purposes of section 230 of the Biosecurity Act where required;
- identify the conditions that the Determination is subject to in accordance with section 231 of the Biosecurity Act.

Background

The Biosecurity Act provides the regulatory framework for managing diseases and pests that may enter Australian territory and 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.

Prior to the commencement of the Biosecurity Act, biosecurity risks were managed under the *Quarantine Act 1908* (Quarantine Act). The Quarantine Act was repealed on the day the Biosecurity Act commenced. 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. Relevantly for ports, item (1) of Schedule 3 to the Transitional Act provides that despite subsection 229(2) of the Biosecurity Act, the Director of Biosecurity or the Director of Human Biosecurity (each, a Director) may make a determination under subsection 229(1) of the Biosecurity Act in relation to a port even if the Director is not satisfied of the matters referred to in subsection 229(2) of the Biosecurity Act in relation to the port.

For commencement of the Biosecurity Act and relying on item (1) of Schedule 3 to the Transitional Act, the Director of Biosecurity made determinations under subsection 229(1) of the Biosecurity Act to enable the continuation of operations as ports transitioned from the requirements of the Quarantine Act to the Biosecurity Act. These initial transitional determinations ceased on 15 June 2019.

The *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2019* (Extension 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 the Port of Christmas Island was extended for twenty-four months, ending on 15 June 2021. The extension reflected the anticipated time

needed for the port to be fully compliant with the necessary requirements for making determinations under section 229 of the Biosecurity Act.

The Biosecurity (*Consequential Amendments and Transitional Provisions*) (*Extension of First Points of Entry Determinations*) Instrument 2021 enabled the Director of Biosecurity to subsequently vary the period of effect for select first point of entry determinations that were subject to a variation enabled by the Extension Instrument 2019. The transition period for the Port of Christmas Island was extended for a further nine months, ending on 15 March 2022. The further extension reflected the additional time needed, due to unforeseen circumstances such as COVID-19 restrictions and shipping disruptions, for the port to be fully compliant with the necessary requirements for making determinations under section 229 of the Biosecurity Act.

For the purposes of the making Determination, the Director of Biosecurity was satisfied that the Port of Christmas Island (that was previously subject to a transitional determination) met the requirements of subsection 229(2) of the Biosecurity Act. The Director of Biosecurity specified that the Port of Christmas Island was to be first point of entry for the purposes of subsection 229(1) of the Biosecurity Act.

Impact and Effect

The Determination:

- determines that the Port of Christmas Island is a first point of entry for vessels other than passenger vessels and for the following classes of goods:
 - baggage other than passenger vessel baggage;
 - freight containers;
 - general goods;
 - non-commercial vessel waste;
 - waste unloaded from vessels operated by Australian Border Force and Royal Australian Navy.
- designates Flying Fish Cove Moorings, a specified area of the Port of Christmas Island, as a biosecurity entry point for non-commercial vessels.
- designates Crane Berth, Rock Berth Mooring and Smith Point Moorings, specified areas of the Port of Christmas Island, as biosecurity entry points for vessels other than non-commercial vessels and passenger vessels. Under section 246 of the Biosecurity Act, a vessel that has arrived at the Port of Christmas Island must be brought to a biosecurity entry point for the vessel at that port as soon as practicable.
- designates Crane Berth, Rock Berth and Smith Point, specified areas of the Port of Christmas Island, as biosecurity entry points for baggage other than non-commercial vessel baggage or passenger vessel baggage and inorganic bulk goods.
- designates Crane Berth, a specified area of the Port of Christmas Island, as a biosecurity entry points for freight containers and general goods.
- designates, Flying Fish Cove Jetty, a specified area of the Port of Christmas Island, as a biosecurity entry points for non-commercial vessel baggage, non-commercial vessel waste and waste unloaded from vessels operated by Australian Border Force and Royal Australian Navy. Under section 147 of the Biosecurity Act, if a vessel has arrived at the Port of Christmas Island and is carrying goods that are to be unloaded from the vessel, those goods must be brought to a biosecurity entry point for those goods.

- sets out the conditions to which the Determination is subject, namely conditions regarding notifying the Agriculture Department of certain changes at the Port of Christmas Island, in accordance with section 231 of the Biosecurity Act.

The 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, and which does not have the capacity to manage the biosecurity risk, pose a threat that a disease or pest may enter, establish or spread and cause harm to Australia's human, plant and animal health, the environment and the economy.

Consultation

In considering whether the Port of Christmas Island met the requirements of section 229 of the Biosecurity Act, the Department of Agriculture, Water and the Environment (the Department) engaged directly with operator at Port of Christmas Island over the transition period. The transition period began when the transitional determination commenced in June 2016 and was initially due to cease in June 2019 but has been extended twice, now ceasing in March 2022. The Department conducted onsite visits, exchanged correspondence, and undertook ongoing communication with operator 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 the sole first point of entry and biosecurity entry point operator, as well as clarification of the activities carried out at the port and biosecurity entry points. This has informed the decision that Port of Christmas Island is a first point of entry for vessels other than passenger vessels and for the following goods: baggage other than passenger vessel baggage, freight containers, general goods, non-commercial vessel waste and waste unloaded from vessels other than those operated by Australian Border Force and Royal Australian Navy. It has also informed the decisions about the areas of the Port of Christmas Island have been designated as biosecurity entry points for certain classes of vessels and goods at the port.

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 17 February 2022.

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

Paragraph 234(b) 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). The decision to make the Port of Christmas Island 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 Christmas Island.

The exemption of this instrument from disallowance ensures that the technical and scientific assessment as to the appropriate management of biosecurity risks is applied while also enabling stakeholders to make arrangements for vessels to travel to Christmas Island with certainty about arrangements upon arrival. This is particularly sensitive with respect to Christmas Island as it is isolated and has limited port facilities for vessels.

Details of the Biosecurity (First Point of Entry—Port of Christmas Island) Determination 2022

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (First Point of Entry—Port of Christmas Island) Determination 2022* (the Determination).

Section 2 – Commencement

This section provides for the Determination to commence on 16 March 2022.

Section 3 – Authority

This section provides that the Determination is made under subsection 229(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 “freight container” means a re-usable container that is designed to be used to transport goods by one or more modes of transport; that can be transferred from one mode of transport to another without unloading the goods from the container; and that is known as a 20 foot long container or a 40 foot long container. The definition of ‘freight container’ applies to both empty freight containers and freight containers carrying goods.

The Determination provides that “general goods” means goods (as defined by the Determination and as described immediately below) other than baggage, freight containers, live horses or waste.

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. For the purposes of section 19 of the Biosecurity Act, goods includes an animal, a plant, a sample or specimen of a disease agent, a pest, mail and any other article, substance or thing. Under section 119 of the Biosecurity Act, goods become subject to biosecurity control when they enter Australian territory. For the purposes of section 158 of the Biosecurity Act, exposed goods are goods which a biosecurity officer reasonably suspects have been exposed to goods or conveyances subject to biosecurity control. Section 159 of the Biosecurity Act enables a biosecurity officer to make an exposed goods order which requires that the exposed goods are subject to certain requirements and powers exercisable under the Biosecurity Act.

The Determination provides that “inorganic bulk goods” means chemicals, ores, minerals or gases that are brought or imported into Australian territory in bulk and do not contain animals, plants, organic compounds or microbes. The inorganic bulk goods definition should be understood to mean inorganic bulk goods carried on the vessel in bulk, rather than inorganic goods carried on a vessel in bags, containers, or other receptacles.

The Determination provides that “non-commercial vessel” has the same meaning as in the *Biosecurity Regulation 2016*, which is “a vessel that is used, or is intended to be used, wholly for recreational purposes (whether or not crew are employed on the vessel)”.

The Determination provides that “non-commercial vessel baggage” means baggage carried on a non-commercial vessel.

The Determination provides that “passenger vessel baggage” means baggage carried on a passenger vessel.

The Determination provide that “vessel” means a vessel (as defined in section 9 of the Biosecurity Act) that is subject to biosecurity control. Under section 191 of the Biosecurity Act, vessels become subject to biosecurity control when they enter Australian territory.

The Determination also provides that “waste” means goods (as defined by section 19 of the Biosecurity Act) that are subject to biosecurity control and that are intended, by the person in charge of the vessels on which the goods are carried, to be disposed of.

Part 2 First point of entry

Section 5 - First point of entry – vessels

Section 5 of the Determination provides that the Port of Christmas Island is a first point of entry for vessels other than passenger vessels.

The Port of Christmas Island is not to be a first point of entry for passenger vessels as the port does not have appropriate facilities and amenities for this class of vessels.

Section 6 - First point of entry – goods

Section 6 of the Determination provides that the Port of Christmas Island is a first point of entry for the following goods: baggage other than passenger vessel baggage, freight containers, general goods, non-commercial vessel waste and waste unloaded from vessels other than those operated by Australian Border Force and Royal Australian Navy.

The Port of Christmas Island has appropriate facilities and amenities for the classes of goods for which the port is determined a first point of entry.

The first note after section 6 highlights that the Port of Christmas Island is not a first point of entry for any goods other than those specified in section 6.

The second note after section 6 directs the reader to sections 173 and 174 of the Biosecurity Act (which deal with prohibited goods and conditionally non prohibited goods) and any

determinations made under those sections for matters relating to 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 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 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 port or the types of biosecurity risk associated with the vessels or goods.

For example, a Director may determine under section 229 of the Biosecurity Act that a port is to be a first point of entry that can accept freight containers, but may also determine that the biosecurity risk associated with freight containers needs to be managed at a specific location within the port (such as a location with the appropriate facilities to assess and treat biosecurity risk, such as a certified container stand). Section 230 of the Biosecurity Act enables the Director to designate that location to be a biosecurity entry point for freight containers.

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 vessel must ensure that the goods that are to be unloaded from the vessels are brought to the biosecurity entry point for those goods as soon as practicable. Section 246 of the Act provides that where a biosecurity entry point has been designated for vessels at a first point of entry, the relevant vessels 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 246 of the Biosecurity Act.

Section 7 - Biosecurity entry points – vessels

Section 7 of the Determination designates particular areas within the first point of entry as biosecurity entry points for specified vessels, or a vessel within a class of vessels. Biosecurity entry points are designated for all vessels at all ports that are first points of entry for those vessels.

Section 7 in the Determination contains a table, which lists the vessel class in column 1 and the area, or areas, which are the biosecurity entry points for those vessels in column 2.

Item 1 lists Flying Fish Cove Moorings as a biosecurity entry point for non-commercial vessels.

Item 2 lists the following areas as biosecurity entry points for vessels, other than non-commercial vessels and passenger vessels:

- Crane Berth;
- Rock Berth Mooring;
- Smith Point Mooring.

Each of the biosecurity point locations listed above has the appropriate facilities and amenities required to deal with the relevant class of vessels for which it is designated.

The note after the table in section 7 provides that a vessel that has arrived at the Port of Christmas Island must be brought to a biosecurity entry point for the vessel at that port as soon as practicable and refers the reader to section 246 of the Biosecurity Act.

Section 8 - Biosecurity entry points – goods

Section 8 of the Determination designates particular areas within the first point of entry as biosecurity entry points for specified goods.

Section 8 contains a table, which lists the class of goods in column 1 and the areas, or areas, that are the biosecurity entry points for those goods in column 2.

Item 1 lists the following areas as biosecurity entry points for baggage other than non-commercial vessel baggage or passenger vessel baggage, and for inorganic bulk goods:

- Crane Berth;
- Rock Berth;
- Smith Point;

Item 2 lists Crane Berth as a biosecurity entry point for freight containers and for general goods.

Item 3 lists Flying Fish Cove Jetty as a biosecurity entry point for non-commercial vessel baggage, non-commercial vessel waste and waste unloaded from vessels operated by Australian Border Force and Royal Australian Navy.

Each of the biosecurity point locations listed above has the appropriate facilities and amenities required to deal with the relevant classes of goods for which it is designated.

The note after the table in section 8 provides that goods listed in the table to be unloaded from a vessel that has arrived at the port must be brought to a biosecurity entry point for those goods as soon as practicable and directs the reader to section 147 of the Biosecurity Act.

Part 4 – Conditions

Section 9 – Conditions – notifying the Agriculture Department of changes

Section 9 in the Determination is subject to the conditions set out in this section, which relate to notifying the department of certain changes. These conditions must be met by the owners or lessees of the Port of Christmas Island, or by a person or body that is responsible for carrying out operations at the Port of Christmas Island.

Subsection 9(1) of the Determination provides that the determination of the Port of Christmas Island as a first point of entry is subject to the conditions in this section.

Subsection 9(2) provides that owner (or, if there is more than one owner, an owner) of the Port of Christmas Island must provide notice in writing to the department of a change to the business entity operating the port or a biosecurity entry point at the port 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 the Port of Christmas Island must provide notice in writing to the department of a change to the business entity operating the port or a biosecurity entry point at the port as soon as practicable after becoming aware of the change.

The conditions in subsections 9(2) and 9(3) are required so that the department is aware of the current operators of a first point of entry and of biosecurity entry points and can liaise with the operators regarding first point of entry requirements and other matters.

Subsection 9(4) of the Determination provides that if a person or body that is responsible for carrying out operations at the Port of Christmas Island proposes to make a change referred to in subsection 9(5), described below, the person 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 the Port of Christmas Island providing biosecurity measures to be taken to manage the level of biosecurity risk associated with operations carried out at the port (paragraph 9(5)(a));
- a change to the facilities or amenities available at the Port of Christmas Island for biosecurity officials and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act at the port (paragraph 9(5)(b));
- a change to the procedures at the Port of Christmas Island that may affect the ability of a person who carries out operations at the port to identify associated biosecurity risks (paragraph 9(5)(c));
- a change to procedures at the Port of Christmas Island that may affect the ability for biosecurity officials or human biosecurity officials to be informed of biosecurity risks associated with operations at the port (paragraph 9(5)(d));
- a change to procedures at the Port of Christmas Island for managing any other factors that may contribute to, or affect, the level of biosecurity risk associated with operations carried out at the port (paragraph 9(5)(e)).

The conditions in subsections 9(4) and 9(5) are required so that the department can assess whether the changes impact the port's compliance with the requirements to be a first point of entry and whether an amendment to the relevant first point of entry determination is required.