

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015

Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Amendment (2022 Measures No. 1) Instrument 2022

Legislative Authority

The *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Amendment (2022 Measures No. 1) Instrument 2022* (the Extension Instrument) is made under subitem 1(4) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (the Biosecurity Transitional Provisions Act).

The Biosecurity Transitional Provisions Act provides for consequential and transitional matters arising from the enactment of the *Biosecurity Act 2015* (the Biosecurity Act).

Subitem 1(4) of Schedule 3 to the Biosecurity Transitional Provisions Act provides, relevantly, that if the Director of Biosecurity or the Director of Human Biosecurity (the Director) is satisfied that:

- the requirements referred to in subsection 223(2) of the Biosecurity Act will not be able to be met in relation to a landing place referred to in subitem 1(2) by the end of the transition period, or
- the requirements referred to in subsection 229(2) of the Biosecurity Act will not be able to be met in relation to a port referred to in subitem 1(2) by the end of the transition period,

then the relevant Director may, by legislative instrument, extend the transition period in relation to the landing place or port.

The end of the transition period for Kingsford-Smith Airport, Sydney (Sydney Airport) and the Port of Cocos (Keeling) Islands (the Port of Cocos Island) has previously been extended to 15 June 2022 by the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021*.

Purpose

The purpose of the Extension Instrument is to extend the end of the transition period to 30 November 2022 for Sydney Airport as a landing place in Australian territory, and to 15 December 2022 for the Port of Cocos Islands, as a port in Australian territory.

This then allows the period of effect of the *Biosecurity (First Point of Entry—Kingsford-Smith Airport, Sydney) Determination 2016* and the *Biosecurity (First Point of Entry—Port of Cocos (Keeling) Islands) Determination 2016* to be similarly extended.

Background

The Biosecurity Act provides the regulatory framework for the management of diseases and pests that may cause harm to human, animal or plant health or the environment. Subsections 223(1) and 229(1) of the Biosecurity Act, taken together, provide that the Director may determine that a specified landing place or port in Australian territory is a first point of entry for:

- aircraft or vessels generally, or a specified class of aircraft or vessels, that are subject to biosecurity control; and
- 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.

Subsections 223(2) and 229(2) of the Biosecurity Act, taken together, provide that the Director may make a determination in relation to a landing place or 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 landing place or port are met and the level of biosecurity risk associated with operations carried out at the landing place or port is acceptable.

Subitem 1(1) of Schedule 3 to the Biosecurity Transitional Provisions Act provides that, despite subsections 223(2) and 229(2) of the Biosecurity Act, the Director may make a determination:

- under subsection 223(1) of the Biosecurity Act in relation to a landing place even if the Director is not satisfied of the matters referred to in subsection 223(2) of the Biosecurity Act in relation to the landing place, and
- 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 that Act in relation to the port.

To support commencement of the Biosecurity Act, first point of entry determinations have been made as permitted by subitem 1(1) of Schedule 3 to the Biosecurity Transitional Provisions Act to allow landing places and ports that facilitate international arrivals of goods, vessels or aircraft to continue their operations while working towards meeting regulatory requirements.

Subitem 1(2) of Schedule 3 to the Biosecurity Transitional Provisions Act provides that a determination made relying on subitem 1(1) must not be expressed or varied to have effect for a period that is longer than the transition period for the landing place or port. Subitem 1(6) of Schedule 3 to that Act provides that the transition period is three years starting from when section 3 of the Biosecurity Act commenced. The initial transition period commenced on 16 June 2016, and ceased on 15 June 2019.

New determinations commenced on 16 June 2019 for those first points of entry for which the Director was satisfied that regulatory requirements were met, and the level of biosecurity risk associated with operations carried out at the landing place or port was acceptable. However, 8 landing places and 20 ports were unable to meet regulatory requirements before the end of the transition period.

Subitem 1(4) of Schedule 3 to the Biosecurity Transitional Provisions Act provides that the Director may, by legislative instrument, extend the transition period in relation to a landing place or port, if the Director is satisfied that the requirements referred to in subsections 223(2) or 229(2) of the Biosecurity Act (as relevant) will not be able to be met by the end of the

transition period. The transition period for these landing places and ports was thus extended for periods of between 6 and 24 months, depending on the type and complexity of remedial action required to achieve compliance with regulatory requirements. Some landing places and ports have since been subsequently extended by further determinations.

This includes Sydney Airport and the Port of Cocos Islands, which have had their transition periods as first points of entry extended until 15 June 2022 by the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021*.

Impact and Effect

The Extension Instrument extends the transitional period for Sydney Airport as a landing place until 30 November 2022, and the Port of Cocos Islands as a port until 15 December 2022. This reflects the anticipated time needed for these first points of entry to be fully compliant with the necessary requirements for making determinations for landing places and ports under subsections 223(1) and 229(1) of the Biosecurity Act, as appropriate.

This Extension Instrument is imperative to ensure that:

- Sydney Airport can continue to operate as a first point of entry, offering certainty to stakeholders such as importers and aircraft operators whilst managing biosecurity risk; and
- the Port of Cocos Islands can continue to operate as a first point of entry, offering certainty to stakeholders whilst managing biosecurity risk, particularly as Cocos (Keeling) Islands is a remote community that already experiences difficulty importing essential goods.

Consultation

Kingsford-Smith Airport, Sydney

In considering whether Sydney Airport as a landing place met the requirements to make a subsection 223(1) first point of entry determination under the Biosecurity Act, or whether to extend the transition period to allow for an extension of the transitional determination for the landing place, the Department of Agriculture, Water and the Environment (the department) engaged actively with the operator, Sydney Airport Corporation Limited (SACL), to monitor its progress on meeting regulatory requirements with respect to live horses as specified goods.

The department considers that SACL has demonstrated that it is taking steps to actively transition to normal arrangements as a first point of entry before the end of the extended transition period.

Port of Cocos (Keeling) Islands

In considering whether the Port of Cocos Islands as a port met the requirements to make a subsection 229(1) first point of entry determination under the Biosecurity Act, or whether to extend the transition period to allow for an extension of the transitional determination for the port, the department engaged directly with the operator of the Port of Cocos Islands, LINX Port Services Proprietary Limited (LINX), to confirm the nature of their operations, the existing infrastructure and facilities, and to review their compliance with legislative requirements. The department also engaged directly with the administrator of port facilities for the Cocos Islands, the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC).

The department considers that LINX has demonstrated that it is taking steps to actively transition to normal arrangements as a first point of entry before the end of the extended transition period.

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 and, further to this, confirmed this advice in the context of extension and amendment instruments on 30 May 2019.

Details / Operation

Details of the Extension Instrument are set out in the [Attachment](#).

Other

The Extension Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act). However, under subitem 1(5) of Schedule 3 to the Biosecurity Transitional Provisions Act, the Extension Instrument, as an instrument made under subitem 1(4), is not subject to disallowance. This is consistent with the status of first point of entry determinations made under sections 223 and 229 of the Biosecurity Act. This Extension Instrument is a necessary prerequisite to allow the proposed *Biosecurity Legislation Amendment (First Points of Entry) Determination 2022* to be made. That instrument would amend the period of effect for the transitional determinations for Sydney Airport (the *Biosecurity (First Point of Entry—Kingsford-Smith Airport, Sydney) Determination 2016*) and the Port of Cocos Islands (the *Biosecurity (First Point of Entry—Port of Cocos (Keeling) Islands) Determination 2016*).

Subjecting a first point of entry determination to disallowance would undermine the technical and scientific assessment as to the appropriate management of biosecurity risks and frustrate risk management processes leading to the inadequate management of biosecurity risks. The possibility of disallowance would also have the potential to cause disruption and potential costs to stakeholders who make decisions in reliance on the determination. For example, aircraft travelling to Sydney Airport could not be certain of landing arrangements upon arrival until after the expiry of the disallowance period. Similarly, vessels travelling to the Port of Cocos Islands would encounter the same issue. This is particularly sensitive with respect to the Cocos (Keeling) Islands as the external territory is a remote community that already experiences difficulty importing essential goods.

As such, this Extension Instrument, as an instrument made under subitem 1(4) of the Biosecurity Transitional Provisions Act, is justified as not being subject to disallowance, being a necessary prerequisite to allow transitional determinations to be made for Sydney Airport and the Port of Cocos Islands as first points of entry.

A statement of compatibility with human rights, prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required, as paragraph 15J(2)(f) of the Legislation Act only requires a statement to be prepared for disallowable legislative instruments.

Details of the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Amendment (2022 Measures No. 1) Instrument 2022*

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Amendment (2022 Measures No. 1) Instrument 2022* (the Extension Instrument).

Section 2 – Commencement

This section provides for the Extension Instrument to commence the day after the instrument is registered.

Section 3 – Authority

This section provides that the Extension Instrument is made under subitem 1(4) of Schedule 3 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (the Biosecurity Transitional Provisions Act).

Section 4 – Schedules

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

Schedule 1 – Amendments

Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021

Item [1] Section 5 (table item 1, column 2)

Section 5 of the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021* contains a table, in which Column 1 lists the names of landing places and Column 2 lists the transition period end day for that landing place. Table item 1 lists Kingsford-Smith Airport, Sydney (Sydney Airport) as a landing place in Column 1 and lists the transition period end day in Column 2 as 15 June 2022.

Item 1 of Schedule 1 of the Extension Instrument omits 15 June 2022 as the transition period end day for Sydney Airport and substitutes 30 November 2022 as the transition period end day. This has the effect of extending the transition period for Sydney Airport as a landing place, as provided by item 1 of Schedule 3 to the Biosecurity Transitional Provisions Act, so that the transition period now ends on 30 November 2022.

Item [2] Section 6 (table item 4, column 2)

Section 6 of the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021* contains a table, in which Column 1 lists the names of ports and Column 2 lists the transition period end day for that port. Table item 4 lists the Port of Cocos (Keeling) Islands (Port of Cocos Islands) as a port in Column 1 and lists the transition period end day in Column 2 as 15 June 2022.

Item 2 of Schedule 1 of the Extension Instrument omits 15 June 2022 as the transition period end day for the Port of Cocos Islands, and substitutes 15 December 2022 as the transition period end day. This has the effect of extending the transition period for the Port of Cocos Islands as a port, as provided by item 1 of Schedule 3 to the Biosecurity Transitional Provisions Act, so that the transition period now ends on 15 December 2022.