

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Determination 2022

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 or the environment.

Part 5 of Chapter 6 of the Act (Part 5) provides for the establishment of biosecurity response zones by the Director of Biosecurity.

Under subsection 365(1) of the Act, the Director of Biosecurity may, by legislative instrument, make a determination that a specified area in Australian territory is a **biosecurity response zone** if:

- a biosecurity officer suspects on reasonable grounds that a disease or pest may be present in or on goods or premises in the area; and
- the disease or pest poses an unacceptable level of biosecurity risk; and
- the Director of Biosecurity is satisfied that it is necessary to make a determination for the purposes of managing the biosecurity risk posed by the disease or pest.

Purpose

The purpose of the *Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Determination 2022* (the Determination) is to determine a specified area in relation to certain landing places (being certain specified airports) as a biosecurity response zone.

Background

Foot and mouth disease (FMD) is a highly contagious viral disease of mammals that has great potential for causing severe economic loss in susceptible cloven-hoofed animals such as cattle, swine, sheep and goats. FMD can persist in the environment in soil, on equipment used with infected animals and on goods such as clothing and footwear.

Australia is currently free of FMD.

In May 2022, an outbreak of FMD was confirmed in Indonesia.

FMD is currently present in approximately 70 countries overseas, but in the majority of these countries it is contained through vaccination or other control measures. At the onset of an outbreak in a country previously free from FMD, the biosecurity risk is increased. This includes the current situation in Indonesia where the extent of the FMD outbreak remains undefined and is continuing to spread through the archipelago including to Bali, a common tourist destination for Australian travellers. In the absence of vaccination and other measures to control spread, the number of infected animals grows rapidly as does the volume of the virus in the environment. This gives rise to the need to exercise additional powers under the

Act in the biosecurity response zone for the purposes of managing the biosecurity risk posed by FMD.

In particular, the contamination of footwear of travellers from Indonesia presents a risk of introduction of FMD into Australia. To minimise this risk and to inform travellers of the biosecurity risk posed by FMD, the footwear worn by all passengers on incoming flights from Indonesia to Australia will be treated using foot mats. The determination of certain areas of specified airports as biosecurity response zones for the treatment of footwear responds to this biosecurity risk.

In making the Determination, the Director of Biosecurity considered information provided by a biosecurity officer that a disease or pest, namely foot and mouth disease, may be present in or on premises in the specified area of the relevant landing places listed in the Determination. Having considered this information, the Director of Biosecurity was satisfied that it is necessary to make the Determination for the purposes of managing the biosecurity risk posed by foot and mouth disease in the specified area of the relevant landing places.

Impact and effect

The effect of the Determination will be to limit the risk of FMD being introduced to Australia by way of travellers from Indonesia.

Paragraph 366(3)(b) provides that a biosecurity response zone determination may be in force for up to 12 months. The Determination is in force for a period of three months beginning on the day of commencement. Before the Determination ceases to be in effect, consideration will be given as to whether the arrangements need to be in place for a further period.

Consultation

On 21 July 2022, in accordance with section 368 of the Act, the Director of Biosecurity consulted the following heads of the State or Territory bodies responsible for the administration of matters relating to biosecurity in each State or Territory in which the biosecurity response zone will lie:

- The Director-General of Primary Industries and Regional Development (WA);
- The Secretary of the Department of Regional NSW;
- The Chief Executive of the Queensland Department of Agriculture and Fisheries;
- The Secretary of the Victorian Department of Jobs, Precincts and Regions;
- The CEO of the Northern Territory Department of Industry, Tourism and Trade; and
- The CEO of the South Australian Department of Primary Industries and Regions.

Due to the severe risk posed by FMD to animal health and the Australian economy and the need to make the Determination as soon as possible to address these risks, the Office of Best Practice Regulation (OBPR) was not consulted in the making of the Determination.

Details/Operation

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination commences on the day after it is registered on the Federal Register of Legislation.

Details of the Determination are set out in the Attachment.

Other

Subsection 365(4) of the Act provides that a determination under subsection 365(1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

It is appropriate for the Determination to be exempt from disallowance because the risk assessment conducted to determine the level of biosecurity risk associated with FMD relies on technical and scientifically-based evidence. It concludes that, among other things, the consequences to animal and human health, the environment and economic impacts of the establishment and/or spread of FMD is considered extreme. Further, the overall risk rating associated with goods carried with passengers exposed to susceptible animals or contaminated environments undergoing a widespread uncontrolled outbreak of FMD is high.

This exemption from disallowance is in accordance with paragraph 44(2)(a) of the *Legislation Act*. As the Determination is exempt from disallowance, this also means that 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*.

Details of the Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Determination 2022

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Determination 2022*.

Section 2 – Commencement

This section provides that the Determination commences on the day after the instrument is registered on the Federal Register of Legislation.

The note below the table provides that the table relates only to the provision of the Determination as originally made. It would not be amended to deal with later amendments of the Determination. The purpose of this note is to clarify that the commencement of any amendments is not reflected in this table.

Section 3 – Authority

This section provides that the Determination is made under subsection 365(1) of the *Biosecurity Act 2015*.

Section 4 – Definitions

The purpose of this section is to provide the definitions for the Determination, including *foot mat*, *relevant landing place*, and *specified biosecurity response zone*.

Relevant landing place means the following airports:

- Sydney (Kingsford-Smith) Airport;
- Melbourne (Tullamarine) Airport;
- Brisbane Airport;
- Perth Airport;
- Adelaide Airport;
- Darwin Airport; and
- Cairns Airport.

These airports are all specified as relevant landing places for the purposes of the Determination because they all receive flights from Indonesia.

Section 5 – Specified biosecurity response zone

This section specifies an area in relation to a relevant landing place to be a biosecurity response zone for the purposes of subsection 365(1) of the Act. These include:

- the airside area of the relevant landing place within the meaning of the *Aviation Transport Security Act 2004* (the Aviation Act);
- the landside security zone within the meaning of the Aviation Act known as the sterile area of each landing place;

- the areas in each landing place under the control of the Australian Border Force or the area within which the Australian Border Force conducts immigration and customs activities.

These areas of the airports defined as relevant landing places in section 4 of the Determination are the areas that passengers are first likely to encounter when they disembark international flights. Therefore, they are the most appropriate areas of the landing places in which the biosecurity threat posed by FMD can be addressed.

The airside area is defined in section 9 of the Aviation Act to mean the airside area established under that Act and includes any airside security zone and airside event zone established within the airside area. The landside security zone is defined in the same section to mean a landside security zone established under the Aviation Act. The boundaries of the airside area and landside security zone for each airport are established in a declaration made by Gazette notice under subsection 28(2) of the Aviation Act and published on the Federal Register of Legislation (section 29 of the Aviation Act refers). The landside security zone is commonly known or described as the “sterile area” of an airport.

Section 6 – Biosecurity risk

Subsection 366(1) of the Act requires a biosecurity response determination to state that a biosecurity officer suspects on reasonable grounds that:

- a disease or pest may be present in or on goods or premises in the zone; and
- the disease or pest poses an unacceptable level of biosecurity risk; and

that the Director of Biosecurity is satisfied that it is necessary to make the determination for the purposes of managing the biosecurity risk posed by the disease or pest.

This section complies with subsection 366(1) of the Act by stating that a biosecurity officer suspects on reasonable grounds that FMD may be present in the specified biosecurity response zone on footwear worn by travellers entering Australia from Indonesia, that FMD poses an unacceptable level of biosecurity risk and that the Director of Biosecurity is satisfied that it is necessary to make the determination for the purposes of managing the biosecurity risk posed by FMD.

Paragraphs 366(2)(a) and (b) of the Act also require a biosecurity response determination to specify each disease or pest that poses an unacceptable level of biosecurity risk and has been identified and the nature of the biosecurity risk that needs to be managed.

This section complies with paragraph 366(2)(a) of the Act by stating that FMD is identified as a disease that poses an unacceptable level of biosecurity risk. The section also complies with paragraph 366(2)(b) of the Act by specifying, in subsection 6(3), the nature of the biosecurity risk that needs to be managed in relation to FMD.

Section 7 – Exercise of powers

Subsection 366(2) of the Act relevantly provides that a biosecurity response zone determination must also specify:

- each power in Division 2 of Part 3 (powers to require biosecurity measures to be taken) that may be exercised in the biosecurity response zone in accordance with that Division;
- each power in section 367 (additional biosecurity response zone powers) that may be exercised in, or in relation to goods or premises in, the biosecurity response zone in accordance with that section.

This section complies with subsection 366(2) of the Act by specifying the particular powers in Division 2 of Part 3 of the Act that may be exercised in relation to goods or premises in the biosecurity response zone specified in section 5 above. Specifically:

- the power in section 333 of the Act to require persons entering or leaving premises in the specified biosecurity response zone to do so at specified places; and
- the power in section 335 of the Act to require goods to be treated in a specified manner in the specified biosecurity response zone.

This section also complies with subsection 366(2) of the Act by specifying each power in section 367 of the Act that may be exercised in, or in relation to goods or premises in, the biosecurity response zone specified in section 5 above. Specifically:

- the power in paragraph 367(a) of the Act to cause the specified biosecurity response zone to be identified (by, for example, affixing notices); and
- the power in paragraph 367(d) of the Act to set up foot mats for use in the specified biosecurity response zone.

“Foot mat” is defined in section 4 above to mean a mat that contains a solution that treats equipment, fabric, surfaces and other things for the purposes of addressing the biosecurity risk posed by foot and mouth disease.

The Director of Biosecurity is satisfied that the exercise of each of the above powers is appropriate and adapted for the purpose of managing the biosecurity risk posed by FMD. The above powers allow for the disinfecting of travellers’ footwear by setting up foot mats in the relevant landing places. The powers will allow notices to alert people to the use of the foot mats, any potential that the treatment may damage the goods and inform travellers of the biosecurity risks. The powers will also allow persons to be required to leave the premises at specified places, ensuring that travellers cannot exit the relevant airport by some other avenue thereby avoiding the foot mats. The powers will be exercised together to require the set up and mandatory utilisation of foot mats by passengers that return from Indonesia as they exit through the specified area of the relevant landing place. Disinfecting shoes by using foot mats reduces the risk of FMD becoming present in Australia.

Section 8 – Period of effect

This section specifies that the Determination is in force for a period of 3 months beginning on the day of its commencement. This section complies with paragraph 366(2)(g) of the Act, which requires a biosecurity response determination to specify the period during which the determination is to be in force.

The Director of Biosecurity considers that the period of three months is no longer than the period of time that is necessary to manage the biosecurity risk posed by FMD.

Paragraph 366(3)(b) provides that a biosecurity response zone determination may be in force for up to 12 months. Before the Determination ceases to be in effect, consideration will be given as to whether the arrangements need to be in place for a further period.

Section 9 – Repeal

This section provides for the automatic repeal of the Determination at the end of the period of 3 months beginning on the day of its commencement. The effect of this section is to repeal the Determination by operation of law without the need to make a separate instrument for this purpose.