

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 (Norfolk Island Airport) Instrument (No. 2) 2022

Legislative Authority

The *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Amendment (Norfolk Island Airport) Instrument (No. 2) 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 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 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.

Purpose

The purpose of the Extension Instrument is to extend the end of the transition period to 15 March 2023 for Norfolk Island Airport as a landing place in Australian territory, to allow the period of effect of the *Biosecurity (First Point of Entry—Norfolk Island Airport) Determination 2016* (the Norfolk Island Airport Determination) to be similarly extended to 15 March 2023.

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.

Subsection 223(1) of the Biosecurity Act provides that the Director of Biosecurity or the Director of Human Biosecurity (Director) may determine that a specified landing place in Australian territory is a first point of entry for:

- aircraft generally, or a specified class of aircraft, 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.

Subsection 223(2) of the Biosecurity Act provides that the Director 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.

Subitem 1(1) of Schedule 3 to the Biosecurity Transitional Provisions Act provides that, despite subsection 223(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.

To support commencement of the Biosecurity Act, first point of entry determinations were made in 2016, including the Norfolk Island Airport Determination, as permitted by subitem 1(1) of Schedule 3 to the Biosecurity Transitional Provisions Act, to allow landing places that facilitate international arrivals of goods 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) of that Act must not be expressed or varied to have effect for a period that is longer than the transition period for the landing place. Subitem 1(6) of Schedule 3 to the Biosecurity Transitional Provisions Act provides that the transition period means three years starting from when section 3 of the Biosecurity Act commenced. The initial transition period therefore commenced on 16 June 2016, and ceased on 15 June 2019.

However, Norfolk Island Airport was unable to meet regulatory requirements before the end of the initial transition period. As such, the transition period for Norfolk Island Airport was extended to the end of 15 June 2021 by way of the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2019*. The extension to the transition period thus enabled the period of effect of the Norfolk Island Airport Determination to be similarly extended to the end of 15 June 2021 by way of the *Biosecurity (First Points of Entry Determinations) Amendment (Period of Effect) Determination 2019*.

Due to a variety of factors, including the emergence of the COVID-19 pandemic and its concomitant impact on travel and supply lines, Norfolk Island Airport has had its transition period as a first point of entry extended on a further two occasions. The *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021* (the Biosecurity Extension of FPOE Determinations Instrument) extended the transition period to 15 March 2022. This allowed for the extension of the period of effect of the Norfolk Island Airport to 15 March 2022 by the *Biosecurity (First Points of Entry Determinations) Amendment (Periods of Effect) Determination 2021*. The *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Amendment (Norfolk Island Airport) Instrument 2022*, which amended the Biosecurity Extension of FPOE Determinations Instrument, further extended the transition period of Norfolk Island Airport as a first point of entry to 15 September 2022. The extension of the transition period to 15 September 2022 thus enabled the period of effect of the Norfolk Island Airport Determination to be similarly extended to 15 September 2022 via the *Biosecurity (First Point of Entry-Norfolk Island Airport) Amendment (Period of Effect) Determination 2022*.

As Norfolk Island Airport will be unable to meet the relevant regulatory requirements before 15 September 2022, the operator of Norfolk Island Airport, Norfolk Island Regional Council, submitted a formal request to the Department of Agriculture, Fisheries and Forestry (the department) to extend the transition period of Norfolk Island Airport as a first point of entry to 15 March 2023. This is proposed to be effected by the Extension Instrument. This will

allow the *Biosecurity (First Point of Entry—Norfolk Island Airport) Amendment (Period of Effect) Determination (No. 2) 2022* to amend the Norfolk Island Airport Determination to extend its period of effect to 15 March 2023.

Impact and Effect

The Extension Instrument extends the transitional period for Norfolk Island Airport as a landing place until 15 March 2023. The extension is anticipated to provide the time needed for Norfolk Island Airport to be fully compliant with the necessary requirements to be determined as a first point of entry under subsection 223(1) of the Biosecurity Act.

Consultation

In considering whether Norfolk Island Airport as a landing place met the requirements to make a 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 engaged directly with the operator of Norfolk Island Airport, Norfolk Island Regional Council, to confirm the nature of their operations, the existing infrastructure and facilities, and reviewed their compliance with legislative requirements.

Norfolk Island Regional Council have advised the department that they would be unable to meet the necessary requirements for making a standard determination under subsection 223(1) of the Biosecurity Act before the end of the transition period of 15 September 2022, due to significant delays associated with the construction of a required new air cargo facility. Shipping issues and supply unavailability, exacerbated by the impact of COVID-19, have caused delays in acquiring required building materials and equipment, while weather events on Norfolk Island have also impacted both the delivery of supplies and the facility's construction.

Norfolk Island Regional Council, its contractor, the department and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts have attended meetings and exchanged correspondence regarding the delays and the request for extension. Norfolk Island Regional Council expects the works that would allow Norfolk Island Airport to meet the necessary requirements to be completed, with full evidence of compliance, before the end of the extended transition period. This is reflected in a formal request for extension received by the department on 29 July 2022.

Additional consultation on the Extension Instrument was undertaken with the Department of Health and Aged Care (DHAC). Endorsement of the Extension Instrument has been provided by the DHAC.

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](#).

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 subsection 223(1) of the Biosecurity Act. This Extension

Instrument is a necessary prerequisite to allow the proposed *Biosecurity (First Point of Entry—Norfolk Island Airport) Amendment (Period of Effect) Determination (No. 2) 2022* to be made. That instrument would amend the period of effect for the for Norfolk Island Airport Determination to 15 March 2023.

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 Norfolk Island could not be certain of landing arrangements upon arrival until after the expiry of the disallowance period. This is particularly sensitive with respect to Norfolk Island as the external territory is isolated and only has one designated landing place, being Norfolk Island Airport, which is the subject of this Extension Instrument.

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 Norfolk Island Airport to continue as a first point 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 of compatibility of human rights to be prepared for disallowable legislative instruments.

Details of the Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Amendment (Norfolk Island Airport) Instrument (No. 2) 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 (Norfolk Island Airport) Instrument (No. 2) 2022* (the Extension Instrument).

Section 2 – Commencement

This section provides for the Extension Instrument to commence immediately after registration of the instrument.

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* (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 2, column 2)

Item 1 amends table item 2, column 2 of section 5 of the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Instrument 2021* to omit “15 September 2022” as the transition end day for Norfolk Island Airport, and substitutes “15 March 2023” as the new transition end day for Norfolk Island Airport.

This has the effect of extending the transition period for Norfolk Island Airport as a first point of entry, as permitted by subitem 1(1) of Schedule 3 to the Biosecurity Transitional Provisions Act, so that the transition period will now end at the end of 15 March 2023.