

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

*Biosecurity (Biosecurity Response Zone for Foot and Mouth Disease–Relevant Ports)
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 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 (Biosecurity Response Zone for Foot and Mouth Disease–Relevant Ports) Determination 2022* (the Determination) is to determine areas in relation to certain relevant ports that are 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. A biosecurity response zone to manage FMD risks is in place for airports at relevant landing places.

Any Australian first point of entry port may receive vessels from Indonesia. In this context, the contamination of footwear of people entering Australia by vessel from Indonesia presents a risk of introduction of FMD into Australia. To minimise this risk and to inform people of the biosecurity risk posed by FMD, the footwear worn by people on incoming vessels from Indonesia to Australia, including international cruise vessels, will be treated using foot mats or footbaths. The determination of areas of relevant ports as biosecurity response zones for the treatment of footwear responds to this biosecurity risk. If another country develops an active outbreak of foot and mouth disease during the period of effect of the determination, the same treatment would be applied to the footwear of people on incoming vessels from that country.

In making the Determination, the Director of Biosecurity considered information provided by a biosecurity officer that a disease or pest, namely FMD, may be present in or on goods or premises in the biosecurity response zone as specified in the Determination and that FMD poses an unacceptable level of biosecurity risk. 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 FMD.

Impact and effect

The effect of the Determination will be to limit the risk of FMD being introduced to Australia by way of people entering Australia from Indonesia, or if another country develops an active outbreak of FMD, from that country.

Paragraph 366(3)(b) of the Act provides that a biosecurity response zone determination may be in force for up to 12 months. The Determination is in force for the period beginning on 24 September 2022 and ending on 30 June 2023. 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

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;
- The CEO of the South Australian Department of Primary Industries and Regions; and
- The Secretary of the Tasmanian Department of Natural Resources and Environment.

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 Legislation Act).

The Determination commences on 24 September 2022.

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 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 travellers 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 (Biosecurity Response Zone for Foot and Mouth Disease–Relevant Ports) Determination 2022

Part 1 - Preliminary

Section 1 – Name

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

Section 2 – Commencement

This section provides that the Determination commences on 24 September 2022.

Section 3 – Authority

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

Section 4 – Definitions

The purpose of this section is to provide the definitions for the Determination, including *Act*, *biosecurity response zone* and *relevant port*.

Relevant port means a port that is determined to be a first point of entry for a vessel or class of vessels under subsection 229(1) of the Act.

Section 234 of the Act has the effect that an instrument determining a specified port in Australian territory to be a first point of entry is a legislative instrument. As such, each of these determinations is publicly available on the Federal Register of Legislation.

These ports are all specified as relevant ports for the purposes of the Determination because they all may receive vessels from Indonesia.

Section 5 – Reasons for making instrument

This section provides that the reasons for making the instrument are 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
- 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.

Subsection 366(1) of the Act requires a biosecurity response determination to state the above-mentioned matters.

Note 1 to the section advises to see section 310 of the Act in relation to the meaning of “biosecurity risk” in Chapter 6 of the Act and this instrument. Section 310 relevantly provides that for the purposes of Chapter 6, “biosecurity risk” means the likelihood of a disease or pest entering Australian territory or a part of Australian territory, or emerging, establishing itself or spreading in Australian territory or a part of Australian territory, and the potential for the disease or pest to cause certain kinds of harm or economic consequences (which differ according to whether the disease or pest is suspected of being, or known to be, an invasive pest).

Note 2 to the section explains that the matters included in section 5 of the Determination must be stated in a biosecurity response zone determination, and to see subsection 366(1) of the Act.

In making the Determination, the Director of Biosecurity considered information provided by a biosecurity officer that a disease or pest, namely FMD, may be present in or on goods or premises in the biosecurity response zone as specified in the Determination and that FMD poses an unacceptable level of biosecurity risk. 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 FMD.

Part 2 – Biosecurity Response Zone

Section 6 – Biosecurity response zone

This section provides for the purposes of subsection 365(1) of the Act that the following areas are a biosecurity response zone:

- each area of a relevant port that is designated, under paragraph 230(a) of the Act, as a biosecurity entry point for a vessel or a class of vessels; and
- the Port of Cocos (Keeling) Islands.

Relevant port is defined in section 4 to mean a port that is determined to be a first point of entry for a vessel or class of vessels under subsection 229(1) of the Act. These determinations are legislative instruments that are publicly available on the Federal Register of Legislation. With one exception, each of these determinations currently designates specified areas of the port as biosecurity entry points for a vessel or a class of vessels.

The exception is the *Biosecurity (First Point of Entry – Port of Cocos (Keeling) Islands) Determination 2022*, which does not designate an area of the port as a biosecurity entry point for vessels. In this case, it is appropriate for the whole of the Port of Cocos (Keeling) Islands to be specified for the biosecurity response zone.

Note 1 to this section explains that the powers set out in Part 3 of the Determination and Division 4 of Part 3 of Chapter 6 of the Act may be exercised in, or in relation to goods or premises (which includes a conveyance) in, the biosecurity response zone for the purpose of managing the biosecurity risk posed by a disease or pest to which this instrument relates (see sections 370 and 371 of the Act).

The powers set out in Part 3 of the Determination are explained below. The powers in Division 4 of Part 3 of Chapter 6 relevantly provide that in certain circumstances (including for example, where biosecurity measures in relation to the treatment of goods are required by

a biosecurity officer under sections 333 to 336 - see section 9 below) a biosecurity officer may direct a person in charge of the goods to carry out biosecurity measures, carry out biosecurity measures themselves, or arrange for another person with appropriate qualifications or expertise to carry out biosecurity measures (see section 347). A biosecurity officer may also affix a notice to, or near, goods or premises in relation to which biosecurity measures have been required, which must state certain things, for example, that a disease or pest may be present in or on the goods or premises and that biosecurity measures have been required in relation to the goods or premises (see section 348). A civil penalty provision may apply to a person who interferes with, removes or defaces such a notice (see subsection 348(3)).

Note 2 to this section explains that before exercising a power set out in Part 3 of this instrument, a biosecurity official must be satisfied of the matters referred to in section 32 of the Act (the principles). These principles aim to ensure that a power is only exercised by a biosecurity official if it is likely to be effective in, or to contribute to, achieving the purpose for which the power is to be exercised, is appropriate and adapted for its purpose, and is no more restrictive or intrusive than is required.

Section 7 – Diseases and Pests

This section states that, for the purposes of paragraph 366(2)(a) of the Act, foot and mouth disease poses an unacceptable level of biosecurity risk and has been identified.

Paragraph 366(2)(a) of the Act provides that a biosecurity response zone determination must specify each disease or pest that poses an unacceptable level of biosecurity risk and has been identified. Section 7 complies with this requirement.

Section 8 – Nature of biosecurity risk that needs to be managed

This section provides that, for the purposes of paragraph 366(2)(b) of the Act, the nature of the biosecurity risk that needs to be managed is that:

- there is a likelihood that foot and mouth disease may be present in or on goods in a biosecurity response zone, in particular on footwear worn by people entering Australia from a country with an active outbreak of foot and mouth disease; and
- foot and mouth disease is not present in Australia; and
- foot and mouth disease is a highly contagious viral disease of cloven-hoofed mammals that has a great potential for causing severe economic loss if it enters Australia; and
- foot and mouth disease poses an unacceptable level of biosecurity risk.

Paragraph 366(2)(b) of the Act provides that a biosecurity response zone determination must specify the nature of the biosecurity risk that needs to be managed. Section 8 complies with this requirement by specifying the nature of the biosecurity risk that needs to be managed in relation to FMD.

Part 3 – Powers that may be exercised in, or in relation to goods or premises in, the biosecurity response zone

Section 9 – Powers to require biosecurity measures to be taken

This section provides that, for the purposes of paragraph 366(2)(c) of the Act, the powers set out in the following sections of Division 2 of Part 3 of Chapter 6 of the Act are specified:

- the power in section 333 of the Act, that includes the power to require persons entering or leaving premises in the biosecurity response zone to do so at specified places;
- the power in section 335 of the Act, to require goods to be treated in a specified manner in the biosecurity response zone; and
- the power in section 336 of the Act in relation to treatment that may damage goods, that includes the power to treat goods without notice if a biosecurity officer suspects on reasonable grounds that a disease or pest that may be present in or on the goods poses a high level of biosecurity risk, and the goods need to be treated as soon as practicable to reduce that risk to an acceptable level.

Paragraph 366(2)(c) of the Act provides that a biosecurity response zone determination must 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. Section 9 complies with this requirement.

The Director of Biosecurity is satisfied that the exercise of each of the above powers in the biosecurity response zone is appropriate and adapted for the purpose of managing the biosecurity risk posed by FMD, as explained further below in relation to section 10 of the Determination.

Section 10 – Additional biosecurity response zone powers

This section provides that, for the purposes of paragraph 366(2)(f) of the Act, the powers set out in the following paragraphs of section 367 of the Act are specified:

- the power in paragraph 367(a) (identification of the biosecurity response zone) – this will allow the biosecurity response zone to be identified (for example, by affixing notices); and
- the power in paragraph 367(d) (setting traps or setting up equipment or other structures in the biosecurity response zone) – this will allow foot mats and footbaths to be set up for use in the biosecurity response zone.

Paragraph 366(2)(f) provides that a biosecurity response zone determination must specify each power set out 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. Section 10 complies with this requirement.

The Director of Biosecurity is satisfied that the exercise of each of the above powers in sections 9 and 10 is appropriate and adapted for the purpose of managing the biosecurity risk posed by FMD. The above powers allow for the sanitisation of footwear by setting up foot

mats and footbaths in the relevant ports. The powers will allow notices to alert people to the use of the foot mats and footbaths, any potential that the treatment may damage the goods and inform persons of the biosecurity risks.

The powers will also allow persons to be required to leave the premises at specified places, ensuring that they cannot exit the relevant port by some other avenue thereby avoiding the foot mats and foot baths. The powers will be exercised together to require the set up and mandatory utilisation of foot mats and footbaths by people who arrive from Indonesia or other countries with an active outbreak of FMD as they exit a vessel at the areas of a relevant port that are a biosecurity response zone. Treating shoes by using foot mats and footbaths reduces the risk of FMD becoming present in Australia.

Part 4 – Period in force

Section 11 – Period in force

This section provides that for the purposes of paragraph 366(2)(g) of the Act, the Determination is in force for the period beginning on 24 September and ending on 30 June 2023.

This section complies with paragraph 366(2)(g) of the Act, which requires a biosecurity response zone determination to specify the period during which the determination is to be in force.

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

Paragraph 366(3)(b) of the Act 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 12 – Repeal

This section provides for the repeal of the Determination on 1 July 2023. 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.