

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Amendment (Extension)

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) Amendment (Extension) Determination 2022* (the Amendment Determination) is to extend the period of effect of the *Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Determination 2022* (the BRZ Determination) to 30 June 2023.

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 with FMD having been detected in 25 provinces across the archipelago, including Bali, a common tourist destination for Australian travellers. Pending full implementation of the vaccination program and other measures to control the outbreak in Indonesia, the number

of infected animals grows 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 respond to this biosecurity risk, the BRZ Determination determined certain areas of specified airports to be biosecurity response zones to allow for foot mats to be used for the treatment of footwear worn by passengers from Indonesia. The BRZ Determination was made with an initial period of effect of three months, commencing on 23 July 2022 and ending on 22 October 2022. At the time it was made, it was anticipated that consideration would be given as to whether the arrangements in the BRZ Determination would need to be in place for a further period.

In making the Amendment 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 premises in the specified area of the relevant landing places listed in the BRZ Determination. Having considered this information, the Director of Biosecurity was satisfied that it is necessary to make the Amendment Determination to extend the period of effect of the BRZ Determination for the purposes of continuing to manage the biosecurity risk posed by FMD in the specified area of the relevant landing places until 30 June 2023.

Impact and Effect

The effect of the Amendment Determination will be to continue 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 Amendment Determination has the effect that the BRZ Determination will be in force for a period of less than 12 months, beginning on 23 July 2022 and ending on 30 June 2023.

Consultation

In accordance with section 368 of the Act, before making the Amendment Determination, 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 lies:

- 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.

The Office of Best Practice Regulation (OBPR) was consulted in the making of the Amendment Determination. OBPR has advised that a Regulation Impact Statement is not required (OBPR ID 22-03515).

Details/Operation

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

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

Details of the Amendment 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 Amendment 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 Amendment 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) Amendment (Extension) Determination 2022*

Section 1 – Name

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

Section 2 – Commencement

This section provides that the Amendment Determination commences immediately 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 Amendment Determination as originally made. It would not be amended to deal with later amendments of the Amendment 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 Amendment Determination is made under subsection 365(1) of the *Biosecurity Act 2015*.

Section 4 – Schedules

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

Schedule 1 – Amendments

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

Item 1 – Section 8

This item omits the words “a period of 3 months beginning on the day this instrument commences” and substitutes “the period beginning on 23 July 2022 and ending on 30 June 2023” in section 8 of the *Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Determination 2022* (BRZ Determination).

Section 8 of the BRZ Determination in its original form provided for the instrument to be in force for a period of 3 months beginning on the day of its commencement. The BRZ Determination commenced on 23 July 2022 and under original section 8, was due to cease to be in effect at the end of 22 October 2022.

The effect of this amendment is to extend the period of effect of the BRZ Determination for an additional period until 30 June 2023, to provide for a total period of effect commencing on 23 July 2022 and ending on 30 June 2023. The Amendment Determination does not have

retrospective effect. The commencement date of 23 July 2022 provided for in amended section 8 reflects the commencement date of the BRZ Determination.

The Director of Biosecurity considers that this total period, commencing on 23 July 2022 and ending on 30 June 2023, 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. The total period provided for in amended section 8 is less than 12 months.

In making the Amendment 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 BRZ Determination and that FMD continues to pose an unacceptable level of biosecurity risk. Having considered this information, the Director of Biosecurity was satisfied that it is necessary to make the Amendment Determination to extend the period of effect of the BRZ Determination for the purposes of managing the biosecurity risk posed by FMD.

Item 2 – Section 9

This item omits the words “at the end of the period of 3 months beginning on the day this instrument commences” and substitutes “on 1 July 2023” in section 9 of the BRZ Determination.

Section 9 of the BRZ Determination in its original form provided for the automatic repeal of the BRZ Determination at the end of the period of 3 months beginning on the day of its commencement. The purpose of section 9 was to repeal the BRZ Determination by operation of law without the need to make a separate instrument for this purpose.

The effect of this amendment is to provide for the BRZ Determination to instead be repealed on 1 July 2023. This is consequential to the amendment to section 8 to extend the period of effect of the BRZ Determination such that it ends on 30 June 2023.