

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Sydney Kingsford Smith Airport) Determination 2022

Legislative Authority

The *Biosecurity (First Point of Entry—Sydney Kingsford Smith Airport) Determination 2022* (the Determination) is made under subsection 223(1) of the *Biosecurity Act 2015* (the Biosecurity Act).

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

- aircraft generally, or a specified class of aircraft that are subject to biosecurity control;
- 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 of Biosecurity or the Director of Human Biosecurity 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.

Subsection 224(1) of the Biosecurity Act provides that a determination under subsection 223(1) in relation to a landing place may designate a specified area of the landing place as a biosecurity entry point for aircraft generally, or a specified class of aircraft that are subject to biosecurity control, and/or 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 225(1) of the Biosecurity Act provides that a determination under subsection 223(1) in relation to a landing place may be expressed to be subject to conditions specified in the determination. Subsection 225(2) provides that without limiting subsection 225(1), the conditions may relate to an owner or lessee of the landing place, a person or body that is responsible for carrying out operations at the landing place and/or the operations carried out at the landing place.

Purpose

The purpose of the Determination is to:

- determine that a specified landing place, being Sydney Kingsford Smith Airport, is for the purposes of subsection 223(1) of the Biosecurity Act, a first point of entry for:
 - aircraft generally; and
 - goods generally, with the exception of live horses other than live horses from New Zealand and live horses from New Caledonia

- designate specified areas of Sydney Kingsford Smith Airport as biosecurity entry points for the purposes of section 224 of the Biosecurity Act where required.

Background

The Biosecurity Act provides the regulatory framework for managing diseases and pests that may enter Australian territory and cause harm to human, animal or plant health or the environment, and provides the Commonwealth with powers to assess and manage biosecurity risk, among other things. ‘Biosecurity risk’ is defined in section 9 of the Biosecurity Act.

The *Quarantine Act 1908* (the Quarantine Act) was replaced by the Biosecurity Act upon its commencement on 16 June 2016. The *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* (the Biosecurity Transitional Provisions Act) provided consequential and transitional provisions to support the commencement of the Biosecurity Act as it replaced the Quarantine Act. The Biosecurity Transitional Provisions Act also provided transitional provisions to enable the requirements for first points of entry to be met as the transition from the Quarantine Act to the Biosecurity Act occurred. This was achieved through ‘transitional’ first point of entry determinations that would remain in effect for three years (the transition period). The transition period for Kingsford Smith Airport, provided for by the *Biosecurity (First Point of Entry—Kingsford-Smith Airport, Sydney) Determination 2016* (2016 Determination) commenced on 15 June 2016 and ended on 15 June 2019.

Since then, Kingsford-Smith Airport, Sydney has continued to operate as a first point of entry via the extension of its transitional arrangement on three subsequent occasions. The extensions, effected through a series of legislative instruments, reflected the anticipated time needed for the landing place to be compliant with the regulatory requirements for the making of a first point of entry determination under subsection 223(1) of the Biosecurity Act. Most recently, the *Biosecurity (Consequential Amendments and Transitional Provisions) (Extension of First Points of Entry Determinations) Amendment (2022 Measures No. 1) Instrument 2022* was made to extend the transition period for Kingsford-Smith Airport, Sydney as a first point of entry to 30 November 2022. This enabled the making of the *Biosecurity (First Point of Entry—Kingsford-Smith Airport, Sydney) Determination 2022* so that the 2016 Determination would continue to have an unbroken period of effect until 30 November 2022.

For the purposes of the Determination, the delegate of the Director of Biosecurity was satisfied that Sydney Kingsford Smith Airport (that was previously subject to a transitional Determination and previously referred to as Kingsford-Smith Airport, Sydney) met the requirements of subsection 223(2) of the Biosecurity Act to be a first point of entry for aircraft generally and goods generally, with the exception of live horses other than live horses from New Zealand and live horses from New Caledonia. The delegate of the Director of Biosecurity specified that Sydney Kingsford Smith Airport was to be a first point of entry for the purposes of subsection 223(1) of the Biosecurity Act.

Impact and Effect

The Determination:

- determines that Sydney Kingsford Smith Airport is a first point of entry for:
 - aircraft generally; and

- goods generally, with the exception of live horse other than live horses from New Zealand and live horses from New Caledonia;
- designates the following areas as biosecurity entry points for baggage, other than groom baggage:
 - ExecuJet Terminal;
 - Jet Aviation Terminal;
 - Sydney Kingsford Smith Airport Terminal 1;
 - T1 Temporary Livestock Transfer Facility;
- designates T1 Temporary Livestock Transfer Facility as a biosecurity entry point for live horses from New Zealand and live horses from New Caledonia.
- identifies that the Determination is subject to conditions regarding notifying the Agriculture Department of certain changes at Sydney Kingsford Smith Airport, in accordance with section 225 of the Biosecurity Act.

The Determination ensures that aircraft and goods that arrive in Australian territory from overseas arrive at a location that has the facilities available to assess any biosecurity risk and manage it to an acceptable level. Aircraft or goods arriving at a landing place that do not have the capacity to manage the biosecurity risk pose a threat that a disease or pest may enter Australian territory, establish or spread and cause harm to human, plant and animal health.

Consultation

In considering whether Sydney Kingsford Smith Airport met the requirements of subsection 223(2) of the Biosecurity Act, the Department of Agriculture, Fisheries and Forestry (the department) engaged directly with the operators at Sydney Kingsford Smith Airport over the transition period. The transition period began when the transitional determination commenced in June 2016 and was initially due to cease in June 2019 but has been extended three times, now ceasing at the end of 30 November 2022. The department has conducted onsite visits, exchanged correspondence, and undertook ongoing communication with operators to confirm the nature of their operations, assess those operations against regulatory requirements and provide technical and administrative support.

The department sought and obtained clarification from the operators at Sydney Kingsford Smith Airport regarding the activities carried out at the landing place and at the biosecurity entry points. This has informed the decision that Sydney Kingsford Smith Airport is a first point of entry for aircraft generally, goods generally, with the exception of live horses, other than live horses from New Zealand and live hoses from New Caledonia. Consultations with operators has also informed the decisions about areas of the landing place that have been designated as biosecurity entry points for certain classes of goods at Sydney Kingsford Smith Airport.

The Department of Health and Aged Care has also been consulted in relation to the Determination. A delegate of the Director of Human Biosecurity provided a letter of endorsement on 7 November 2022.

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). OBPR advised on 31 March 2016 that a RIS is not required and, further to this, confirmed this advice in the context of making biosecurity first point of entry determinations on 9 May 2019.

Details / Operation

Details of the Determination are set out in the Attachment.

Other

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act). However, under paragraph 228(a) of the Biosecurity Act, it is not subject to disallowance. This is because a decision to make the Determination under subsection 223(1) of the Biosecurity Act is a technical and scientific decision to ensure biosecurity risk associated with aircraft and goods can be satisfactorily managed at specified landing place, that being Sydney Kingsford Smith Airport.

Subjecting a first point of entry determination made under the Biosecurity Act 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 Kingsford Smith Airport could not be certain of landing arrangements upon arrival until after the expiry of the disallowance period. This is particularly sensitive with respect to Sydney Kingsford Smith Airport as the one of the world's longest continuously operated commercial airports and the busiest airport in Australia, which is the subject of this Determination.

As such, the Determination, as an instrument made under subsection 223(1) of the Biosecurity Act, is justified as being exempt from disallowance.

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 (First Point of Entry—Sydney Kingsford Smith Airport) Determination 2022

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (First Point of Entry—Sydney Kingsford Smith Airport) Determination 2022* (the Determination).

Section 2 – Commencement

This section has effect that the whole of the Determination commences on 1 December 2022.

Section 3 – Authority

This section provides that the Determination is made under subsection 223(1) of the *Biosecurity Act 2015*.

Section 4 – Definitions

This section provides for the meaning of expressions referred to throughout the Determination.

The Determination provides that “Act” means the *Biosecurity Act 2015* (the Biosecurity Act).

The Determination provides that “aircraft” means an aircraft (as defined in section 9 of the Biosecurity Act) that is subject to biosecurity control. Under section 191 of the Biosecurity Act, aircraft become subject to biosecurity control upon entry into Australian territory.

The Determination provides that “goods” means goods (as defined by section 19 of the Biosecurity Act) that are subject to biosecurity control or in relation to which an exposed goods order is in force. Under section 119 of the Biosecurity Act, goods become subject to biosecurity control upon entry into Australian territory.

The Determination provides that “live horses from New Caledonia” means living horses certified by an official veterinarian, who is authorised by the competent veterinary authority of the government of New Caledonia to certify the health and residency status of the horses as meeting the residency requirements necessary to satisfy conditions in a permit issued under the Biosecurity Act for the importing or bringing into Australian territory of horses from New Caledonia.

The Determination provides that “live horses from New Zealand” means living horses certified by an official veterinarian, who is authorised by the competent veterinary authority in New Zealand to certify the health and residency status of the horses as meeting the residency requirements necessary to satisfy conditions in a permit issued under the Biosecurity Act for the importing or bringing into Australian territory of horses from New Zealand.

Part 2 First point of entry

Section 5 - First point of entry – aircraft

Section 5 of the Determination provides that Sydney Kingsford Smith Airport is a first point of entry for aircraft generally.

Section 6 - First point of entry – goods

Section 6 of the Determination provides that Sydney Kingsford Smith Airport is a first point of entry for goods generally, with the exception of live horses, other than live horses from New Zealand and live horses from New Caledonia. This means that live horses from New Zealand and New Caledonia may be imported or brought into Australian territory through Sydney Kingsford Smith Airport, but live horses from other countries or places cannot.

New Zealand and New Caledonia are both places free from many of the equine diseases of biosecurity concern to Australia. Sydney Kingsford Smith Airport, as a first point of entry, has a temporary facility in the form of T1 Temporary Livestock Transfer Facility that is sufficiently equipped to manage the biosecurity risks of horses arriving from New Zealand and New Caledonia in compliance with the regulatory requirements of the Biosecurity Act and the *Biosecurity Regulation 2016*. Sydney Kingsford Smith Airport, as a first point of entry, does not currently have a facility that is sufficiently equipped to manage the biosecurity risks of horses arriving from other countries or places. However, the operator of Sydney Kingsford Smith Airport is progressing the establishment of a permanent facility to enable the future management of biosecurity risks associated with live horses entering into Australian territory from places other than New Zealand and New Caledonia.

The note to Section 6 directs the reader to sections 173 and 174 of the Biosecurity Act (which deal with prohibited goods and conditionally non- prohibited goods, respectively) and any determinations made under those sections regarding whether particular goods may be brought into a particular first point of entry.

Part 3 Biosecurity entry points

A biosecurity entry point is a specified area within a first point of entry where an aircraft or goods to which the biosecurity entry point relates must enter as soon as possible. This is an optional tool that can be used to assist with the management of biosecurity risk by ensuring aircraft and goods are brought to a specified place within the first point of entry with the facilities to assess and, if necessary, treat biosecurity risk. They may be used for a range of reasons, such as the size and location of the landing place or the types of biosecurity risk associated with the aircraft or goods.

For example, a Director may determine under section 223 of the Biosecurity Act that a landing place is a first point of entry that can accept baggage but may also determine that the biosecurity risk associated with baggage needs to be managed at a specific location within the landing place (such as a location with the appropriate facilities to inspect baggage and to assess and treat biosecurity risk). Section 224 of the Biosecurity Act enables the Director to designate that location to be a biosecurity entry point for baggage.

Section 147 of the Biosecurity Act provides that, unless limited exceptions apply, where a biosecurity entry point has been designated for goods, the person in charge of the aircraft must ensure that the goods that are to be unloaded from the aircraft are brought to the biosecurity entry point for those goods as soon as practicable. Section 238 of the Biosecurity Act provides that where a biosecurity entry point has been designated for aircraft at a first point of entry, the relevant aircraft must be brought to that biosecurity entry point as soon as practicable. Non-compliance with section 147 and 238 is an offence under the Biosecurity Act. A person who fails to comply with section 147 may also be liable to a civil penalty.

Section 7 - Biosecurity entry points – aircraft

Section 7 of the Determination contains a note that provides that an aircraft must be brought to a biosecurity entry point at first point of entry if there is one at that first point of entry and refers the reader to section 238 of the Biosecurity Act. If there are no biosecurity entry points for a first point of entry, this requirement does not apply to aircraft landing there. The note further provides that the Determination does not designate any area of Sydney Kingsford Smith Airport as a biosecurity entry point for aircraft.

Section 8 - Biosecurity entry points – goods

Section 8 of the Determination designates areas within Sydney Kingsford Smith Airport, identified by an item of the table under that provision, as biosecurity entry points for specified goods, being baggage and live horses from New Zealand and New Caledonia.

Item 1 lists the following areas as biosecurity entry points for baggage:

- ExecuJet Terminal;
- Jet Aviation Terminal;
- Sydney Kingsford Smith Airport Terminal 1;
- T1 Temporary Livestock Transfer Facility.

All four listed biosecurity entry points for baggage have been assessed as having the required facilities to assess, and if necessary, treat biosecurity risks associated with baggage, as commensurate with their anticipated operations. Operationally, baggage belonging to persons travelling with live horses (such as grooms) will generally accompany the horse on arrival at the airport. Such baggage is therefore likely to be brought and assessed and, if necessary, treated at the T1 Temporary Livestock Transfer Facility. It is anticipated that only baggage belonging to persons accompanying a horse will be sent to the T1 Temporary Livestock Facility, though all areas specified as biosecurity entry points for baggage meet the requirements to receive such baggage. These arrangements reflect the operational capacity of the listed biosecurity entry points and are supported and managed by operational controls.

Item 2 lists T1 Temporary Livestock Transfer Facility as a biosecurity entry point for live horses from New Zealand and live horses from New Caledonia. The country or place of export has been used to specify a class of goods, in this case live horses, on the basis that the T1 Temporary Livestock Transfer Facility is equipped to manage biosecurity risks of live horses from New Zealand and live horses from New Caledonia.

Each of the biosecurity point locations listed above has the appropriate facilities and amenities required to deal with the relevant classes of goods for which it is designated.

The notes after the table in section 8 provides that goods listed in the table to be unloaded from a vessel that has arrived at the port must be brought to a biosecurity entry point for those goods as soon as practicable and directs the reader to section 147 of the Biosecurity Act.

Note 1 explains that, if an aircraft has arrived at Sydney Kingsford Smith Airport and is carrying goods listed in the table to be unloaded from an aircraft, those goods must be brought to a biosecurity entry point for those goods as soon as practicable (section 147 of the Biosecurity Act). Therefore, any baggage to be unloaded from an aircraft must be brought to either the ExecuJet Terminal, Jet Aviation Terminal, Sydney Kingsford Smith Airport Terminal 1 or the T1 Temporary Livestock Transfer Facility. As noted above, however, it is anticipated that only baggage belonging to persons accompanying a horse (such as a groom) will be sent to the T1 Temporary Livestock Facility. These arrangements reflect the operational capacity of the respective biosecurity entry points and are supported and managed by operational controls.

Note 2 explains that the Determination does not designate biosecurity entry points for other goods for which Sydney Kingsford Smith Airport is a first point of entry, so the requirement in section 147 of the Act does not apply to the unloading of those other goods. The only class of goods for which a biosecurity entry point is designated at Sydney Kingsford Smith Airport is baggage and live horses from New Zealand and live horses from New Caledonia. Therefore, other goods that are permitted to be unloaded at Sydney Kingsford Smith Airport do not need to be brought to a specific biosecurity entry point within the landing place.

Part 4 – Conditions

Section 9 of the Determination sets out conditions which relate to notifying the Department of certain changes. These conditions must be met by the owners or lessees of Sydney Kingsford Smith Airport, or by a person or body that is responsible for carrying out operations at Sydney Kingsford Smith Airport.

Section 9 – Conditions – notifying the Agriculture Department of changes

Subsection 9(1) of the Determination provides that the determination of the Sydney Kingsford Smith Airport as a first point of entry is subject to the conditions in this section.

Subsection 9(2) of the Determination provides that the owner (or, if there is more than one owner, an owner) of Sydney Kingsford Smith Airport must provide notice in writing to the Department of a change to the business entity operating Sydney Kingsford Smith Airport or a biosecurity entry point at Sydney Kingsford Smith Airport as soon as practicable after becoming aware that the change has occurred or will occur.

Subsection 9(3) of the Determination provides that the lessee (if any, or, if there is more than one lessee, a lessee) of Sydney Kingsford Smith Airport must provide notice in writing to the Department of a change to the business entity operating Sydney Kingsford Smith Airport or a biosecurity entry point at Sydney Kingsford Smith Airport as soon as practicable after becoming aware that the change has occurred or will occur.

Subsection 9(4) of the Determination provides that if a person or body that is responsible for carrying out operations at Sydney Kingsford Smith Airport proposes to make a change

referred to in subsection 9(5), the person or body must, in writing, give the Department reasonable notice of the proposed change.

Subsection 9(5) of the Determination sets out the changes for the purposes of subsection 9(4) of the Determination. These are:

- a change to procedures at Sydney Kingsford Smith Airport providing for biosecurity measures to be taken to manage the level of biosecurity risk associated with operations carried out at Sydney Kingsford Smith Airport (paragraph 9(5)(a));
- a change to the facilities or amenities available at Sydney Kingsford Smith Airport for biosecurity official and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act at Sydney Kingsford Smith Airport (paragraph 9(5)(b));
- a change to the procedures at Sydney Kingsford Smith Airport that may affect the ability of a person who carries out operations at Sydney Kingsford Smith Airport to identify associated biosecurity risks (paragraph 9(5)(c));
- a change to procedures at Sydney Kingsford Smith Airport that may affect the ability for biosecurity officials or human biosecurity officials to be informed of biosecurity risks associated with operations at Sydney Kingsford Smith Airport (paragraph 9(5)(d));
- a change to procedures at Sydney Kingsford Smith Airport for managing any other factors that may contribute to, or affect, the level of biosecurity risk associated with operations carried out at Sydney Kingsford Smith Airport (paragraph 9(5)(e)).