

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry— Cocos (Keeling) Islands Port) Determination 2022

Legislative Authority

The *Biosecurity (First Point of Entry— Cocos (Keeling) Islands Port) Determination 2022* (the Determination) is made under subsection 229(1) of the *Biosecurity Act 2015* (the Biosecurity Act).

Subsection 229(1) of the Biosecurity Act provides that the Director of Biosecurity or the Director of Human Biosecurity may determine that a specified port in Australian territory is a first point of entry (as defined in section 18 of the Biosecurity Act) for any of the following:

- vessels generally, or a specified class of vessels 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 229(2) of the Biosecurity Act provides that the Director of Biosecurity or the Director of Human Biosecurity may make a determination under subsection 229(1) in relation to a port 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 port are met and the level of biosecurity risk associated with operations carried out at the port is acceptable.

Section 230 of the Biosecurity Act provides that a determination under subsection 229(1) in relation to a port may designate a specified area of the port as a biosecurity entry point for any of the following:

- vessels generally, or a specified class of vessels 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 231(1) of the Biosecurity Act provides that a determination under subsection 229(1) in relation to a port may be expressed to be subject to conditions specified in the determination.

Subsection 231(2) of the Biosecurity Act provides that without limiting subsection 231(1), the conditions may relate to an owner or lessee of the port, a person or body that is responsible for carrying out operations at the port or/and the operations carried out at the port.

Subsection 7(1) of the Biosecurity Act provides, in part, that the Biosecurity Act extends to Cocos (Keeling) Islands.

Paragraph 12(a) of the Biosecurity Act provides that a reference in a provision of the Biosecurity Act to ‘Australian territory’ is a reference to Australia, Christmas Island, Cocos (Keeling) Islands and any external Territory to which that provision extends.

Purpose

The purpose of the Determination is to:

- determine that Cocos (Keeling) Islands Port is a first point of entry for vessels, other than passenger vessels, for the purposes of subsection 229(1) of the Biosecurity Act;
- determine that Cocos (Keeling) Islands Port is a first point of entry for the following classes of goods, for the purposes of subsection 229(1) of the Biosecurity Act:
 - baggage other than passenger vessel baggage;
 - 20-foot-long freight containers;
 - general goods;
 - non-commercial vessel waste
- designate specified areas of Cocos (Keeling) Islands Port as biosecurity entry points for the purposes of section 230 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 Cocos (Keeling) Islands Port, provided for by the *Biosecurity (First Point of Entry—Port of Cocos (Keeling) Islands) Determination 2016* (2016 Determination), commenced on 15 June 2016 and ended on 15 June 2019.

Since then, Cocos (Keeling) Islands Port has continued to operate as a first point of entry via the extension of its transitional arrangement effected through legislative instruments that reflected the anticipated time needed for the port to be compliant with the regulatory requirements for the making of a first point of entry determination under subsection 229(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* extended the transition period for Cocos (Keeling) Islands Port as a first point of entry to 15 December 2022.

For the purposes of the making the Determination, the delegate of the Director of Biosecurity was satisfied that Cocos (Keeling) Islands Port met the requirements of subsection 229(2) of the Biosecurity Act to be a first point of entry for vessels other than passenger vessels, baggage other than passenger vessel baggage, 20-foot-long freight containers, general goods and non-commercial vessel waste only. The delegate of the Director of Biosecurity specified that Cocos (Keeling) Islands Port was to be a first point of entry for the purposes of subsection 229(1) of the Biosecurity Act.

Impact and Effect

The Determination:

- determines that port known as Cocos (Keeling) Islands Port is a first point of entry for vessels other than passenger vessels, and for the following classes of goods:
 - baggage other than passenger vessel baggage;
 - 20-foot-long freight containers;
 - general goods;
 - non-commercial vessel waste;
- designates the area in Cocos (Keeling) Islands Port known as Direction Island Anchorage as biosecurity entry points for all non-commercial vessels;
- designates the areas in Cocos (Keeling) Islands Port known as Blue Holes Anchorage, Viva Energy Tanker Moorings and Rumah Baru, West Island as biosecurity entry points for vessels other than non-commercial vessels and passenger vessels. Section 246 of the Biosecurity Act provides that a vessel that has arrived at Cocos (Keeling) Islands Port must be brought to a biosecurity entry point for the vessel at that port as soon as practicable;
- designates the area in Cocos (Keeling) Islands Port known as Rumah Baru, West Island as a biosecurity entry points for 20-foot-long freight containers, baggage other than passenger vessel baggage, general goods and non-commercial vessel waste. Under section 147 of the Biosecurity Act, if a vessel has arrived at Cocos (Keeling) Islands Port and is carrying goods that are to be unloaded from the vessel, those goods must be brought to a biosecurity entry point for those goods;
- designates the areas in Cocos (Keeling) Islands Port known as Viva Energy Tanker Moorings and Rumah Baru, West Island as biosecurity entry points for inorganic bulk goods. Under section 147 of the Biosecurity Act, if a vessel has arrived at Cocos (Keeling) Islands Port and is carrying goods that are to be unloaded from the vessel, those goods must be brought to a biosecurity entry point for those goods;
- sets out the conditions to which the Determination is subject, namely conditions regarding notifying the Agriculture Department of certain changes at Cocos (Keeling) Islands Port, in accordance with section 231 of the Biosecurity Act, that are imposed on the owner and lessee of Cocos (Keeling) Islands Port.

The Determination ensures that vessels 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. Vessels or goods arriving at a port that is not a first point of entry, and which does not have the capacity to manage the biosecurity risk, pose a threat that a disease or pest may enter, establish itself or spread in Australian territory and cause harm to human, plant and animal health, the environment and the economy.

Consultation

In considering whether Cocos (Keeling) Islands Port met the requirements of subsection 229(2) of the Biosecurity Act, the Department of Agriculture, Fisheries and Forestry (the department) engaged directly with the operator at Cocos (Keeling) Islands Port over the transition period. The transition period began when the transitional determination commenced on 15 June 2016 and was initially due to cease in June 2019 but has since been extended three times, now ceasing at the end of 15 December 2022. The department conducted onsite visits,

exchanged correspondence, and undertook ongoing communication with the operator 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 operator at Cocos (Keeling) Islands Port regarding the activities carried out at the port and at the biosecurity entry points. This has informed the decision that Cocos (Keeling) Islands Port is a first point of entry for vessels other than passenger vessels, baggage other than passenger vessel baggage, 20-foot-long freight containers, general goods and non-commercial vessel waste. The ongoing consultation with the operator has also informed the decisions about areas of the port that have been designated as biosecurity entry points for certain classes of vessels and goods at Cocos (Keeling) Islands Port.

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, under paragraph 234(a) of the Biosecurity Act, a legislative instrument for which section 42 of the *Legislation Act 2003* (the Legislation Act) does not apply. Consequently, under paragraph 15J(2)(f) of the Legislation Act, a statement of compatibility of human rights is not required.

The justification for the instrument being exempt from disallowance includes that the decision to make the Determination is a technical and scientific decision to ensure biosecurity risk associated with vessels and goods can be satisfactorily managed at Cocos (Keeling) Islands Port. It is critical to the management of biosecurity risks that the technical and scientific assessment as to the appropriate management of biosecurity risks is implemented and is not undermined. It is also important that there be certainty about the availability of the port as a place that vessels may arrive at. Any uncertainty about the status of the port as a First Point of Entry would have the potential to cause disruption and costs to stakeholders who make decisions in reliance on the Determination. For example, vessels travelling to Cocos (Keeling) Islands could not be certain of arrangements upon arrival until after the expiry of the disallowance period. This is particularly sensitive with respect to Cocos (Keeling) Islands as it is an isolated community and has limited port facilities for vessels.

Details of the Biosecurity (First Point of Entry— Cocos (Keeling) Islands Port) Determination 2022

Part 1—Preliminary

Section 1 Name

This section provides that the name of the instrument is the *Biosecurity (First Point of Entry— Cocos (Keeling) Islands Port) Determination 2022* (the Determination).

Section 2 Commencement

This section provides for the Determination to commence on 16 December 2022.

Section 3 Authority

This section provides that the Determination is made under subsection 229(1) of the *Biosecurity Act 2015* (the Biosecurity Act).

Section 4 Definitions

This section provides definitions for terms contained in the Determination.

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

The Determination provides that “container” has the same meaning as in the *Biosecurity Regulations 2016*, which in effect draws meaning from the Customs Convention on Container 1972. Article 1 of Chapter 1 of the Convention provides that the term container shall mean an article of transport equipment (lift-van, movable tank or other similar structure):

- (i) fully or partially enclosed to constitute a compartment intended for containing goods;
 - (ii) of a permanent character and accordingly strong enough to be suitable for repeated use;
 - (iii) specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;
 - (iv) designed for ready handling, particularly when being transferred from one mode of transport to another;
 - (v) designed to be easy to fill and to empty; and
 - (vi) having an internal volume of one cubic metre or more;
- the term "container" shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container. The term "container" shall not include vehicles, accessories or spare parts of vehicles, or packaging;

The Determination provides that “freight container” means a re-usable container that is designed to be used to transport goods by one or more modes of transport; that can be transferred from one mode of transport to another without unloading the goods from the

container; and that is known as a 20-foot-long container or a 40-foot-long container. The definition of ‘freight container’ applies to both empty freight containers and freight containers carrying goods.

The Determination provides that “general goods” means goods (as defined by the Determination and as described immediately below) other than baggage, freight containers, live horses or waste.

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. For the purposes of section 19 of the Biosecurity Act, goods includes an animal, a plant (whether movable or not), a sample or specimen of a disease agent, a pest, mail and any other article, substance or thing (including, but not limited to, any kind of moveable property). Under section 119 of the Biosecurity Act, goods become subject to biosecurity control when they enter Australian territory via an aircraft or vessel. For the purposes of section 158 of the Biosecurity Act, exposed goods are goods which a biosecurity officer reasonably suspects have been exposed to goods or conveyances subject to biosecurity control. Section 159 of the Biosecurity Act enables a biosecurity officer to make an exposed goods order which requires that the exposed goods are subject to certain requirements and powers exercisable under the Biosecurity Act.

The Determination provides that “inorganic bulk goods” means chemicals, ores, minerals or gases that are brought or imported into Australian territory in bulk and do not contain animals, plants, organic compounds or microbes. The inorganic bulk goods definition should be understood to mean inorganic bulk goods carried on the vessel in bulk, rather than inorganic goods carried on a vessel in bags, containers, or other receptacles.

The Determination provides that “non-commercial vessel” has the same meaning as in the *Biosecurity Regulation 2016*, which is “a vessel that is used, or is intended to be used, wholly for recreational purposes (whether or not crew are employed on the vessel)”.

The Determination provides that “non-commercial vessel waste” means waste carried on a non-commercial vessel.

The Determination provides that “passenger vessel baggage” means baggage carried on a passenger vessel.

The Determination provide that “vessel” means a vessel (as defined in section 9 of the Biosecurity Act) that is subject to biosecurity control. Under section 191 of the Biosecurity Act, vessels become subject to biosecurity control when they enter Australian territory. The Determination also provides that “waste” means goods (as defined by section 19 of the Biosecurity Act) that are subject to biosecurity control and that are intended, by the person in charge of the vessels on which the goods are carried, to be disposed of.

Part 2—First point of entry

Section 5 First point of entry – vessels

Section 5 of the Determination has effect that the port known as Cocos (Keeling) Islands Port is determined as a first point of entry for vessels other than passenger vessels.

Section 6 First point of entry – goods

Section 6 of the Determination has effect that Cocos (Keeling) Islands Port is determined as a first point of entry for the following goods:

- baggage other than passenger vessel baggage;
- 20-foot-long freight containers;
- general goods;
- non-commercial vessel waste.

Cocos (Keeling) Islands Port has appropriate facilities and amenities for the classes of goods for which the port is determined a first point of entry.

The first note after section 6 highlights that Cocos (Keeling) Islands Port is not a first point of entry for any goods other than those specified in section 6 of the Determination.

The second note after section 6 directs the reader to sections 173 and 174 of the Biosecurity Act (which deal with prohibited goods and conditionally non prohibited goods) and any determinations made under those sections for matters relating to 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 vessels 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 vessels and goods are brought to a specified place 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 port or the types of biosecurity risk associated with the vessels or goods.

For example, a Director may determine under section 229 of the Biosecurity Act that a port is to be a first point of entry that can accept freight containers, but may also determine that the biosecurity risk associated with freight containers needs to be managed at a specific location within the port (such as a location with the appropriate facilities to assess and treat biosecurity risk, such as a certified container stand). Section 230 of the Biosecurity Act enables the Director to designate that location to be a biosecurity entry point for freight containers.

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 vessel must ensure that the goods that are to be unloaded from the vessels are brought to the biosecurity entry point for those goods as soon as practicable. Section 246 of the Act provides that where a biosecurity entry point has been designated for vessels at a first point of entry, the relevant vessels must be brought to that biosecurity entry point as soon as practicable. It is an offence not to comply with the requirements of section 147 and 246 of the Biosecurity Act.

Section 7 Biosecurity entry points – vessels

Section 7 of the Determination designates particular areas within the first point of entry as biosecurity entry points for specified vessels, or a vessel within a class of vessels.

Section 7 of the Determination contains a table, which lists the vessel class in column 1 and the area, or areas, which are designated as biosecurity entry points for those vessels listed in column 1, in column 2.

Item 1 lists Direction Island Anchorage as a biosecurity entry point for all non-commercial vessels.

Item 2 lists the following areas as biosecurity entry points for vessels other than non-commercial vessels and passenger vessels:

- Blue Holes Anchorage;
- Viva Energy Tanker Moorings;
- Rumah Baru, West Island.

Each of the biosecurity point locations listed in column 2 of the table has the appropriate facilities and amenities required to deal with the relevant class of vessels for which it is designated.

The note after the table in section 7 explains that a vessel that has arrived at Cocos (Keeling) Islands Port must be brought to a biosecurity entry point for the vessel at that port as soon as practicable and refers the reader to section 246 of the Biosecurity Act.

Section 8 Biosecurity entry points – goods

Section 8 of the Determination designates particular areas within the first point of entry as biosecurity entry points for specified goods.

Section 8 contains a table, which lists the class of goods in column 1 and the areas, or areas, that are the biosecurity entry points for those goods in column 2.

Item 1 lists Rumah Baru, West Island as a biosecurity entry point for 20-foot-long freight containers, baggage other than passenger vessel baggage, general goods and non-commercial vessel waste.

Item 2 lists the following areas as biosecurity entry points inorganic bulk goods:

- Viva Energy Tanker Moorings;
- Rumah Baru, West Island.

Each of the biosecurity point locations listed in column 2 of the table has the appropriate facilities and amenities required to deal with the relevant classes of goods for which it is designated.

The note after the table in section 8 explains 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.

Part 4—Conditions

Section 9 Conditions – notifying the Agriculture Department of changes

Section 9 in the Determination is subject to the conditions set out in this section, which relate to notifying the department of certain changes. These conditions must be met by the owners or lessees of Cocos (Keeling) Islands Port, or by a person or body that is responsible for carrying out operations at Cocos (Keeling) Islands Port.

Subsection 9(1) of the Determination provides that the determination of Cocos (Keeling) Islands Port as a first point of entry is subject to the conditions in this section.

Subsection 9(2) provides that owner (or, if there is more than one owner, an owner) of Cocos (Keeling) Islands Port must provide notice in writing to the department of a change to the business entity operating the port or a biosecurity entry point at the port 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 Cocos (Keeling) Islands Port must provide notice in writing to the department of a change to the business entity operating the port or a biosecurity entry point at the port as soon as practicable after becoming aware of the change.

The conditions in subsections 9(2) and 9(3) are required so that the department is aware of the current operators of a first point of entry and of biosecurity entry points and can liaise with the operators regarding first point of entry requirements and other matters.

Subsection 9(4) of the Determination provides that if a person or body that is responsible for carrying out operations at Cocos (Keeling) Islands Port proposes to make a change referred to in subsection 9(5), described below, the person 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 Cocos (Keeling) Islands Port providing biosecurity measures to be taken to manage the level of biosecurity risk associated with operations carried out at the port (paragraph 9(5)(a));
- a change to the facilities or amenities available at Cocos (Keeling) Islands Port for biosecurity officials and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act at the port (paragraph 9(5)(b));
- a change to the procedures at Cocos (Keeling) Islands Port that may affect the ability of a person who carries out operations at the port to identify associated biosecurity risks (paragraph 9(5)(c));
- a change to procedures at Cocos (Keeling) Islands Port that may affect the ability for biosecurity officials or human biosecurity officials to be informed of biosecurity risks associated with operations at the port (paragraph 9(5)(d));
- a change to procedures at Cocos (Keeling) Islands Port for managing any other factors that may contribute to, or affect, the level of biosecurity risk associated with operations carried out at the port (paragraph 9(5)(e)).

The conditions in subsections 9(4) and 9(5) are required so that the department can assess whether the changes impact the port's compliance with the requirements to be a first point of entry and whether an amendment to the relevant first point of entry determination is required.