

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (First Point of Entry—Norfolk Island International Airport) Determination 2023

Legislative Authority

The *Biosecurity (First Point of Entry—Norfolk Island International Airport) Determination 2023* (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.

Section 224 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 Norfolk Island International Airport, is for the purposes of subsection 223(1) of the Biosecurity Act, a first point of entry for:
 - aircraft generally;
 - baggage; and
 - general goods;

- designate a specified area of Norfolk Island International Airport as a biosecurity entry point for baggage for the purposes of section 224 of the Biosecurity Act.

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* was replaced by the Biosecurity Act upon its commencement on 16 June 2016. The *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* relevantly provided transitional provisions to enable the requirements for first points of entry to be met as the transition to the Biosecurity Act occurred. This was achieved through transitional first point of entry determinations (including for Norfolk Island International Airport) that would remain in effect for a transition period of three years until 15 June 2019.

Since then, Norfolk Island International Airport has continued to operate as a first point of entry via extensions of its transitional arrangement. The extensions 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 transitional arrangements for Norfolk Island International Airport were extended until 15 March 2023.

For the purposes of the Determination, the delegate of the Director of Biosecurity was satisfied that Norfolk Island International Airport (previously referred to as Norfolk Island Airport in transitional determinations) met the requirements of subsection 223(2) of the Biosecurity Act to be a first point of entry for aircraft generally, baggage and general goods. The delegate of the Director of Biosecurity specified that Norfolk Island International 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 Norfolk Island International Airport is a first point of entry for:
 - aircraft generally;
 - baggage; and
 - general goods;
- designates Norfolk Island International Terminal as a biosecurity entry point for baggage;
- identifies that the Determination is subject to conditions regarding notifying the Agriculture Department of certain changes at Norfolk Island International 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 Norfolk Island International 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 Norfolk Island International Airport over the transition period. The transition period began when the transitional determination commenced in June 2016 and is due to cease at the end of 15 March 2023. 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 Norfolk Island International Airport regarding the activities carried out at the landing place and at the biosecurity entry point. This has informed the decision that Norfolk Island International Airport is a first point of entry for aircraft generally, baggage and general goods. Consultations with operators has also informed the decision about the area of the landing place that has been designated as a biosecurity entry point for certain classes of goods at Norfolk Island International 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 17 February 2023.

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, but under paragraph 228(a) of the Biosecurity Act, section 42 (disallowance) of the *Legislation Act 2003* (the Legislation Act) does not apply to the Determination.

The exemption from disallowance for the instrument is set out in primary legislation. The justification for the instrument being exempt includes that the Determination, by determining that Norfolk Island International Airport is a first point of entry for aircraft generally and certain specified goods, implements a technically and scientifically based decision to manage biosecurity risks arising from aircraft, and the goods they carry, arriving in Australian territory from overseas, and thereby enables the government to uphold the objectives of the biosecurity framework.

Determining Norfolk Island International Airport to be a first point of entry is based on a technical and scientific decision that the requirements prescribed in the *Biosecurity Regulation 2016* in relation to this landing place have been met, and that the level of biosecurity risk associated with operations carried out at the landing place is acceptable. It is

critical to the management of biosecurity risks that such a technical and scientific decision is implemented effectively.

It is also critical that stakeholders who make decisions in reliance on the Determination have certainty as to first point of entry arrangements. A lack of certainty could cause significant disruption and increased costs for stakeholders. For example, aircraft travelling to Norfolk Island International Airport could not be certain of landing arrangements upon arrival until after the expiry of a disallowance period. This is sensitive with respect to Norfolk Island as the external territory is isolated and only has one designated landing place, being Norfolk Island International Airport, which is the subject of this Determination.

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—Norfolk Island International Airport) Determination 2023

Part 1 Preliminary

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (First Point of Entry—Norfolk Island International Airport) Determination 2023* (the Determination).

Section 2 – Commencement

This section has effect that the whole of the Determination commences on 16 March 2023.

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 “general goods” means goods other than baggage, 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. Under section 119 of the Biosecurity Act, goods become subject to biosecurity control when carried on an aircraft or vessel that enters Australian territory.

The Determination provides that “waste” means goods that are subject to biosecurity control and that are intended, by the person in charge of the aircraft on which the goods are carried, to be disposed of.

Part 2 First point of entry

Section 5 - First point of entry – aircraft

Section 5 of the Determination provides that Norfolk Island International Airport is a first point of entry for aircraft generally.

Section 6 - First point of entry – goods

Section 6 of the Determination provides that Norfolk Island International Airport is a first point of entry for baggage and general goods.

The first note after section 6 highlights that Norfolk Island International Airport 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, 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 to which the biosecurity entry point relates must be brought as soon as practicable after landing at the first point of entry; and
- goods to which the biosecurity entry point relates must be unloaded after the aircraft carrying the goods has arrived at the first point of entry.

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 Norfolk Island International Airport as a biosecurity entry point for aircraft.

Section 8 - Biosecurity entry points – goods

Section 8 of the Determination designates areas within Norfolk Island International Airport, identified by an item of the table under that provision, as biosecurity entry points for specified goods, that being baggage.

Item 1 lists Norfolk Island International Terminal as a biosecurity entry point for baggage.

Norfolk Island International Terminal, as the listed biosecurity entry point for baggage, has been assessed as having the required facilities to assess, and if necessary, treat biosecurity risks associated with baggage, as commensurate with their anticipated operations.

The notes after the table in section 8 provides that goods listed in the table to be unloaded from an aircraft that has arrived at the landing place 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 Norfolk Island International 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 that has landed at Norfolk Island International Airport must be brought to Norfolk Island International Terminal as soon as practicable.

Note 2 explains that the Determination does not designate biosecurity entry points for other goods for which Norfolk Island International 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 Norfolk Island International Airport is baggage. Therefore, other goods that are permitted to be unloaded from an aircraft that has arrived at Norfolk Island International 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 Norfolk Island International Airport, or by a person or body that is responsible for carrying out operations at Norfolk Island International Airport.

Section 9 – Conditions – notifying the Agriculture Department of changes

Subsection 9(1) of the Determination provides that the determination of the Norfolk Island International 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 Norfolk Island International Airport must provide notice in writing to the

Department of a change to the business entity operating at Norfolk Island International Airport or a biosecurity entry point at Norfolk Island International 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 Norfolk Island International Airport must provide notice in writing to the Department of a change to the business entity operating Norfolk Island International Airport or a biosecurity entry point at Norfolk Island International 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 Norfolk Island International 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 Norfolk Island International Airport providing for biosecurity measures to be taken to manage the level of biosecurity risk associated with operations carried out at Norfolk Island International Airport (paragraph 9(5)(a));
- a change to the facilities or amenities available at Norfolk Island International Airport for biosecurity official and human biosecurity officers to perform functions or exercise powers under the Biosecurity Act at Norfolk Island International Airport (paragraph 9(5)(b));
- a change to the procedures at Norfolk Island International Airport that may affect the ability of a person who carries out operations at Norfolk Island International Airport to identify associated biosecurity risks associated with those operations (paragraph 9(5)(c));
- a change to procedures at Norfolk Island International Airport that may affect the ability for biosecurity officials or human biosecurity officials to be informed of any identified biosecurity risks associated with operations carried out at Norfolk Island International Airport (paragraph 9(5)(d));
- a change to procedures at Norfolk Island International Airport for managing any other factors that may contribute to, or affect, the level of biosecurity risk associated with operations carried out at Norfolk Island International Airport (paragraph 9(5)(e)).