

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Amendment (Gold Coast Airport) Determination 2023

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 (Gold Coast Airport) Determination 2023* (the Amendment Determination) is to amend the *Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Determination 2022* (the Principal Determination) to add Gold Coast Airport as a relevant landing place due to the biosecurity risk associated with travellers arriving at Gold Coast Airport on flights from Indonesia commencing on 30 March 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. At the onset of an outbreak in a country previously free from FMD, the biosecurity risk is increased. 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. 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 Principal Determination commenced on 23 July 2022 and determined certain areas of specified airports to be a biosecurity response zone to allow for powers to be exercised in, or in relation to goods or premises in, the zone, including by requiring foot mats to be used for the treatment of footwear worn by passengers from Indonesia. The Principal Determination provides for the automatic repeal of the instrument on 1 July 2023.

Due to the introduction of a new flight path from Bali, Indonesia to Gold Coast Airport, and the continued risk that FMD may be introduced into Australia by way of travellers' footwear, the Amendment Determination adds Gold Coast Airport as a relevant landing place. This has the effect of determining the relevant areas of Gold Coast Airport to be part of the biosecurity response zone in which the above powers may be exercised. The relevant areas of Gold Coast Airport include the airside area and the landside security zone as defined in the Principal Determination, and any other area under the control of the Australian Border Force (ABF) or within which the ABF manages and undertakes customs or immigration duties.

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 relevant areas of Gold Coast Airport 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 Amendment Determination for the purposes of managing the biosecurity risk posed by FMD.

Impact and Effect

The effect of the Amendment Determination will be to limit the risk of FMD being introduced to Australia by way of people entering Australia, by adding Gold Coast Airport as a relevant landing place such that it is determined to be a biosecurity response zone.

The Amendment Determination does not change the period of effect of the Principal Determination, which provides that it is in force from 23 July 2022 until 30 June 2023.

Consultation

In accordance with section 368 of the Act, before making the Amendment Determination, the Director of Biosecurity consulted the Chief Executive of the Queensland Department of Agriculture and Fisheries and the Director-General of the New South Wales Department of Primary Industries, who are responsible for the administration of matters relating to biosecurity in Queensland and New South Wales (in which the new biosecurity response zone lies).

The Office of Impact Analysis (OIA) was consulted in the making of the Amendment Determination. The OIA has advised that an Impact Analysis is not required (OIA23-04584).

Details/ Operation

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

The Amendment Determination commences on the day 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 Amendment Determination.

The exemption from disallowance for the instrument is set out in primary legislation. The justification for the instrument being exempt from disallowance is that, by allowing a biosecurity response zone to be determined for the purpose of managing an identified disease or pest that poses an unacceptable level of biosecurity risk that may be present in or on goods or premises in the area, the Amendment Determination enables the government to take decisive action necessary to manage the biosecurity risk. The Amendment Determination implements a scientific and technical assessment to manage biosecurity risks, and upholds the objectives of the biosecurity framework.

The Amendment Determination reflects the high level of biosecurity risk that FMD poses to Australia. Findings from a risk assessment conducted to determine the level of biosecurity risk associated with FMD concluded 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. It is critical to the management of biosecurity risks that the Director of Biosecurity is able to make a biosecurity response zone determination with certainty that it will remain in effect and will remain robust throughout the period during which it is necessary to manage the biosecurity risk posed by FMD in that area.

To maintain a high level of accountability, the Act provides that the power to make the instrument is non-delegable below the level of an SES officer and such an instrument may only be in effect for a maximum of 12 months.

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 (Gold Coast Airport) Determination 2023*

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Amendment (Gold Coast Airport) Determination 2023* (the Amendment Determination).

Section 2 – Commencement

This section provides that the Amendment Determination commences on the day 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* (the Act).

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Amendment Determination. This enables the amendment of the *Biosecurity (Foot and Mouth Disease Biosecurity Response Zone) Determination 2022* (the Principal Determination).

Schedule 1 – Amendments

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

Item [1] – Section 4 (at the end of the definition of *relevant landing place*)

This item inserts new paragraph (h) in the definition of “relevant landing place” in section 4 of the Principal Determination.

This item adds Gold Coast Airport to the list of relevant landing places in section 4 of the Principal Determination, such that the specified areas in Gold Coast Airport are determined to be a biosecurity response zone for the purposes of subsection 365(1) of the Act. The specified areas of the relevant landing place are set out in subsection 5(2) of the Principal Determination and include the airside area and landside security zone within the meaning of the *Aviation Transport Security Act 2004*, and any other areas of the relevant landing place that are under the control of the Australian Border Force (ABF) or within which the ABF manages and undertakes customs or immigration activities.

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 Principal 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 Amendment Determination for the purposes of managing the biosecurity risk posed by FMD.

Section 310 of the Act is relevant to the meaning of “biosecurity risk” in Chapter 6 of the Act and the Principal Determination. 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).

Section 6 of the Principal Determination states the above matters for the purposes of subsection 366(1) of the Act, as well as identifying FMD as a disease that poses an unacceptable level of biosecurity risk and the nature of the biosecurity risk that needs to be managed, as required by subsection 366(2) of the Act. The nature of the biosecurity risk that needs to be managed is that foot and mouth disease:

- may be present in or on goods in the specified biosecurity response zone, in particular on footwear worn by travellers entering Australia from Indonesia; and
- is not present in Australia; and
- 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
- poses an unacceptable level of biosecurity risk.

For the purposes of paragraph 366(2)(c) of the Act, section 7 of the Principal Determination sets out the powers that may be exercised in relation to goods or premises in the biosecurity response zone. These are:

- The power in section 333 of the Act may be exercised in relation to premises in the biosecurity response zone to require that persons entering or leaving the premises do so at specified places; and
- The power in section 335 of the Act may be exercised in relation to goods in the specified biosecurity response zone;
- The power in paragraph 367(a) of the Act may be exercised to cause the biosecurity response zone to be identified (whether by affixing notices or by markings or otherwise); and
- The power set out in paragraph 367(d) of the Act may be exercised to set up foot mats for use in the biosecurity response zone.

The Director of Biosecurity is satisfied that the exercise of each of the above powers in the specified areas of Gold Coast Airport, as a biosecurity response zone, is appropriate and adapted for the purpose of managing the biosecurity risk posed by FMD. As with the existing relevant landing places, the powers allow for the sanitation of footwear by setting up foot mats and footbaths in the specified areas of Gold Coast Airport. 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 airport by some other avenue thereby avoiding the foot mats and footbaths. The powers will be exercised together to require the set up and mandatory utilisation of foot mats and footbaths by people who arrive at Gold Coast Airport from Indonesia as they exit an airplane at the areas that are a biosecurity response zone. Treating shoes by using foot mats and footbaths reduces the risk of FMD becoming present in Australia.

Before exercising one of the above powers in the biosecurity response zone, 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.