



Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Determination 2021

I, Greg Hunt, Minister for Health and Aged Care, make the following determination.

Dated 21 January 2021

Greg Hunt
Minister for Health and Aged Care

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Part 1—Preliminary

1 Name

This instrument is the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Determination 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	Immediately after this instrument is registered.	5.19 pm (A.C.T.) 21 January 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsection 477(1) of the *Biosecurity Act 2015*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Australian territory;
- (b) landing place;
- (c) passenger.

In this instrument:

Act means the *Biosecurity Act 2015*.

Australian Border Force has the same meaning as in the *Australian Border Force Act 2015*.

Australian Border Force employee means an APS employee:

- (a) in the Department administered by the Minister administering the *Australian Border Force Act 2015*; and

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- (b) who is in the Australian Border Force or whose services are made available to the Australian Border Force.

connecting traveller means a person who undertakes one or more connecting flights in order to undertake a relevant international flight.

PCR test means a polymerase chain reaction test.

relevant international flight means a flight:

- (a) that commences outside Australian territory and is intended to arrive at a landing place in Australian territory; and
(b) for which the scheduled departure time is at or after 12.01 am on 22 January 2021 in the place where the flight commences.

relevant official means any of the following:

- (a) a biosecurity officer;
(b) a chief human biosecurity officer;
(c) a human biosecurity officer;
(d) an Australian Border Force employee.

suitable face mask or face covering means a face mask or face covering that meets the requirements of section 5.

5 Suitable face masks and face coverings

- (1) This section sets out the requirements that a face mask or face covering must meet to be a **suitable face mask or face covering**.
- (2) The face mask or face covering must be a medical or non-medical face mask or face covering that:
- (a) completely covers the wearer's nose, mouth and chin without gaping; and
(b) can be secured to the wearer's head with ties or ear loops.
- (3) The face mask or face covering must:
- (a) be made of multiple layers of tightly woven materials such as cotton or linen; or
(b) be made as follows:
- (i) the portion of the face mask or face covering in front of the wearer's lips must be made of transparent material that permits lip reading;
(ii) the rest of the face mask or face covering must be made of multiple layers of tightly woven materials such as cotton or linen;
(iii) there must be a tight seal between the transparent material and the rest of the face mask or face covering.

Part 2—Requirements relating to face masks or face coverings—passengers and crew

6 Requirement not to enter Australian territory

Passengers

- (1) A person who is a passenger of an aircraft on a relevant international flight must not enter Australian territory at a landing place unless:
 - (a) the person wore a suitable face mask or face covering at all times during the flight period mentioned in subsection (3) and, if the person was a connecting traveller, at all times during the connecting period mentioned in subsection (4) for the person when the person was in close proximity to other persons, other than as follows:
 - (i) for the minimum time required to consume food, beverages or oral medication;
 - (ii) when the person was required by law to remove the face mask or face covering;
 - (iii) for a person assisting a person who is deaf or hearing-impaired (the ***assisted person***)—when communicating with the assisted person;
 - (iv) if, while the person was on an aircraft, the person in charge of the aircraft permitted the removal of face masks and face coverings for a period for operational reasons—during that period;
 - (v) if it was necessary to remove the face mask or face covering in an emergency (including a medical emergency) or to meet safety requirements; or
 - (b) an exemption set out in section 7 applies to the person; or
 - (c) an exemption was granted to the person under section 8 before the flight commenced.

Person in charge and members of crew

- (2) A person who is the person in charge, or a member of the crew, of an aircraft on a relevant international flight must not enter Australian territory at a landing place unless:
 - (a) the person wore a suitable face mask or face covering at all times during the flight period mentioned in subsection (3) and, if the person was a connecting traveller, at all times during the connecting period mentioned in subsection (4) for the person when the person was in close proximity to other persons, other than as follows:
 - (i) for the minimum time required to consume food, beverages or oral medication;
 - (ii) when the person was required by law to remove the face mask or face covering;

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- (iii) when wearing the face mask or face covering would interfere with the carrying out of the person's duties (for example when communicating with passengers, the person in charge or a member of the crew);
 - (iv) if, while the person was on an aircraft, the person in charge of the aircraft permitted the removal of face masks and face coverings for a period for operational reasons—during that period;
 - (v) if it was necessary to remove the face mask or face covering in an emergency (including a medical emergency) or to meet safety requirements; or
- (b) an exemption set out in section 7 applies to the person; or
 - (c) an exemption was granted to the person under section 8 before the flight commenced.

Flight period

- (3) For the purposes of paragraphs (1)(a) and (2)(a), the flight period is the period that:
 - (a) began when the person boarded the aircraft; and
 - (b) ended when the person disembarked the aircraft.

Connecting period

- (4) For the purposes of paragraphs (1)(a) and (2)(a), the connecting period for a person who was a connecting traveller is the period that:
 - (a) began:
 - (i) if the person boarded the person's connecting flight (or, if the person undertook more than one connecting flight, the person's first connecting flight) less than 72 hours before the scheduled departure time of the relevant international flight—when the person boarded the connecting flight (or the first connecting flight); and
 - (ii) if the person boarded the person's connecting flight (or, if the person undertook more than one connecting flight, the person's first connecting flight) 72 hours or more before the scheduled departure time of the relevant international flight—72 hours before the scheduled departure time of the relevant international flight; and
 - (b) ended when the person boarded the aircraft for the relevant international flight.

Note: A person who fails to comply with a requirement that applies to the person under this instrument may commit an offence (see section 479 of the Act). For generally available defences to offences, see Part 2.3 of the *Criminal Code*.

7 Exemptions—general

Persons with evidence of medical conditions

- (1) An exemption from the condition in paragraph 6(1)(a) or (2)(a) (as applicable) applies to a person who is carrying evidence, provided by a medical practitioner, that the person has a medical condition that:
 - (a) prevents the person from wearing a suitable face mask or face covering; or

(b) would make wearing a suitable face mask or face covering difficult.

Persons under 12

- (2) An exemption from the condition in paragraph 6(1)(a) applies to a person who was less than 12 years old on the day the relevant international flight was scheduled to commence.

8 Exemptions—exceptional circumstances

- (1) In exceptional circumstances, a relevant official may grant an exemption from the condition in paragraph 6(1)(a) or (2)(a) (as applicable) to a person.
- (2) For the purposes of subsection (1), exceptional circumstances are demonstrated by the person providing a compelling reason for not complying with the condition.
- (3) An exemption made under subsection (1) must be in writing.

Part 3—Requirements relating to exposure—passengers and crew

9 Requirement not to enter Australian territory

A person who is a passenger, or the person in charge or a member of the crew, of an aircraft on a relevant international flight must not enter Australian territory at a landing place if, within 72 hours before the flight's scheduled departure time, the person had been exposed, without adequate personal protective precautions, to a person who tested positive for the coronavirus known as COVID-19 in that period, unless:

- (a) the person was not aware, before the flight commenced, that the person had been so exposed; or
- (b) an exemption was granted to the person under section 10 before the flight commenced.

Note: A person who fails to comply with a requirement that applies to the person under this instrument may commit an offence (see section 479 of the Act). For generally available defences to offences, see Part 2.3 of the *Criminal Code*.

10 Exemptions—exceptional circumstances

- (1) In exceptional circumstances, a relevant official may grant an exemption from the requirement in section 9 to a person.
- (2) For the purposes of subsection (1), exceptional circumstances are demonstrated by the person providing a compelling reason for not complying with the requirement.
- (3) An exemption made under subsection (1) must be in writing.

Part 4—Requirements relating to negative tests—passengers

11 Requirement not to enter Australian territory

- (1) A person who is a passenger of an aircraft on a relevant international flight must not enter Australian territory at a landing place unless:
 - (a) the person had provided sufficient evidence, in accordance with subsection (4), that in the period mentioned in subsection (2) or (3) (as applicable) the person was tested for the coronavirus known as COVID-19 and that the result of the test was negative:
 - (i) before the person boarded the aircraft, if requested by a member of the aircraft operator's staff; and
 - (ii) at the landing place, if requested by a relevant official; or
 - (b) an exemption set out in section 14 applies to the person; or
 - (c) an exemption was granted to the person under section 15 before the flight commenced; or
 - (d) an exemption granted under section 16 before the flight commenced applies to the person.
- (2) For the purposes of paragraph (1)(a), the period for a person to whom an extension does not apply under section 12 is:
 - (a) for a person who was not a connecting traveller—the period that began 72 hours before the scheduled departure time of the relevant international flight; and
 - (b) for a person who was a connecting traveller—the period that began 72 hours before the scheduled departure time of the person's connecting flight (or, if the person undertook more than one connecting flight, the person's first connecting flight).
- (3) For the purposes of paragraph (1)(a), the period for a person to whom an extension applies under section 12 is the period specified in the extension.
- (4) For the purposes of paragraph (1)(a), sufficient evidence means the result of:
 - (a) a PCR test; or
 - (b) a test approved under section 13 for a country, if:
 - (i) the person was in the country in the period mentioned in subsection (2) or (3) (as applicable); and
 - (ii) the approval was in force at the beginning of that period.

Note: A person who fails to comply with a requirement that applies to the person under this instrument may commit an offence (see section 479 of the Act). For generally available defences to offences, see Part 2.3 of the *Criminal Code*.

12 Extension of period for testing

- (1) The Director of Human Biosecurity may extend the period for being tested as mentioned in paragraph 11(1)(a) for a class of persons if it is not reasonably

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practicable for that class of persons to be tested and receive test results within a period of 72 hours.

- (2) An extension made under subsection (1) must be in writing.

13 Approval of tests other than PCR tests

- (1) The Director of Human Biosecurity may approve a kind of test for the coronavirus known as COVID-19 for a country if a PCR test is not reasonably available in the country.
- (2) An approval made under subsection (1) must be in writing.

14 Exemptions—general

An exemption from the condition in paragraph 11(1)(a) applies to the following:

- (a) a person who was less than 5 years old on the day the relevant international flight was scheduled to commence;
- (b) a person who is carrying evidence, provided by a medical practitioner, that the person has a medical condition that prevents the person from taking a test for the coronavirus known as COVID-19;
- (c) a person who is a passenger of an aircraft on a relevant international flight that commenced in a country with which Australia has established a safe travel zone (which allows for quarantine-free travel to Australia).

15 Exemptions—exceptional circumstances

- (1) In exceptional circumstances, a relevant official may grant an exemption from the condition in paragraph 11(1)(a) to a person.
- (2) For the purposes of subsection (1), exceptional circumstances are demonstrated by the person providing a compelling reason for not complying with the condition.
- (3) An exemption made under subsection (1) must be in writing.

16 Exemptions—testing not available

- (1) The Director of Human Biosecurity may grant an exemption from the condition in paragraph 11(1)(a) to a class of persons if no test for the coronavirus known as COVID-19 is reasonably available to that class of persons.
- (2) An exemption made under subsection (1) must be in writing.

Part 5—Requirements for aircraft operators

17 Requirement not to land in Australian territory

The operator of an aircraft on a relevant international flight must ensure that the aircraft does not land at a landing place in Australian territory unless the operator took all reasonably practicable steps to ensure that:

- (a) each person on the aircraft, not covered by an exemption mentioned in paragraph 6(1)(b) or (c) or (2)(b) or (c) (as applicable), complied with the condition in paragraph 6(1)(a) or (2)(a) (as applicable) for the flight; and
- (b) each passenger on the aircraft, not covered by an exemption mentioned in paragraph 11(1)(b), (c) or (d), had, before boarding the aircraft, provided evidence as mentioned in paragraph 11(1)(a) if requested to do so by a member of the aircraft operator's staff.

Note: A person who fails to comply with a requirement that applies to the person under this instrument may commit an offence (see section 479 of the Act). For generally available defences to offences, see Part 2.3 of the *Criminal Code*.