

## **EXPLANATORY STATEMENT**

### ***Biosecurity Act 2015***

#### ***Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022***

#### ***Biosecurity (Preventative Biosecurity Measures—Incoming International Flights) Determination 2022***

#### ***Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Amendment (No. 1) Determination 2022***

### **Purpose**

This explanatory statement is a combined explanatory statement for three related instruments. These instruments are the:

- *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022* (the Entry Requirements Determination);
- *Biosecurity (Preventative Biosecurity Measures—Incoming International Flights) Determination 2022* (the Preventative Biosecurity Measures Determination); and
- *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Amendment (No. 1) Determination 2022* (Emergency Requirements Amendment Determination).

The Entry Requirements Determination sets out entry requirements for passengers and crew to produce evidence of a statement that they made before boarding.

The statement for a passenger will need to include, among other matters, the person's international travel history for the 14 days before the day their international flight was scheduled to commence and a declaration about vaccination status. The statement for a member of crew will need to include a declaration that in the 3 days before the day the relevant international flight was scheduled to commence, the individual had not been exposed, without adequate personal protective precautions, to a person who tested positive for the coronavirus known as COVID-19 in that period.

The Entry Requirements Determination also sets out entry requirements for passengers to produce evidence of a negative test result for COVID-19 in the relevant period before a relevant international flight.

The Entry Requirements Determination amalgamates requirements, where appropriate to be continued as part of Australia's public health response to the COVID-19 pandemic, previously contained in the following instruments:

- the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2021*; and

- the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination (No. 2) 2021*.

The Preventative Measures Determination is intended to prevent a person entering Australian territory on an incoming international flight undertaking that flight without wearing a suitable face mask or face covering. The Preventative Measures Determination continues face mask or face covering requirements that were set out in the *Biosecurity (Human Coronavirus with Pandemic Potential) (Preventative Biosecurity Measures—Incoming International Flights) Determination 2021*.

The Emergency Requirements Amendment Determination amends the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Determination 2021* (the Emergency Requirements Determination).

The Emergency Requirements Determination sets out requirements for a person not to enter Australian territory unless (among other matters) they have met the relevant requirements for wearing suitable face masks or face coverings, not being exposed to persons who have tested positive for COVID-19, and returning a negative test for COVID-19 within the 3 days prior to boarding a relevant international flight.

The amendments introduced by the Emergency Requirements Amendment Determination are made to align with the Entry Requirements Determination and the Preventative Biosecurity Measures Determination. As both the Entry Requirements Determination and the Preventative Measures Determination refer to the Emergency Requirements Determination, the Emergency Requirements Amendment Determination makes amendments to the Emergency Requirements Determination to ensure that all three instruments are consistent.

The Director of Human Biosecurity (who is also the Commonwealth Chief Medical Officer) has advised the Health Minister, and the Health Minister is satisfied, that these requirements are necessary to prevent or control the entry, emergence, establishment or spread of COVID-19 in the designated areas, and in Australian territory more broadly.

The Director of Human Biosecurity has advised the Health Minister, and the Health Minister is satisfied, that these requirements:

- are likely to be effective in, or contribute to, achieving its purpose;
- are appropriate and adapted to its purpose;
- are no more restrictive or intrusive than required in the circumstances, including the manner in which the requirement is to be applied.

The Entry Requirements Determination, Preventative Measures Determination and Emergency Requirements Amendment Determination are all legislative instruments for the purposes of the *Legislation Act 2003*.

## **Authority**

### *Entry Requirements Determination*

Subsections 44(1) and 44(2) of the Biosecurity Act relevantly provide that the Health Minister may determine one or more requirements for individuals who are entering Australian territory at a landing place or port for the purpose of preventing a listed human disease from entering, or establishing itself or spreading in, Australian territory or a part of Australian territory.

Subsection 44(3) of the Biosecurity Act provides that a determination made under subsection 44(2) is a legislative instrument, but section 42 (disallowance) of the Legislation Act does not apply to the determination. This is because the potential risk of such disallowance would inhibit the Commonwealth's ability to set out appropriate requirements to prevent a listed human disease that could threaten or harm human health from entering, establishing or spreading in Australia, as it would create uncertainty as to the importance of the public health measures. In the circumstances of the Determination, disallowance of the entry requirements would remove safeguards that aim to minimise the risk of COVID 19 (particularly new variants) entering, emerging, establishing or spreading in Australia.

Subsection 44(5) of the Biosecurity Act sets out that a section 44 determination may specify:

- requirements for all individuals, or classes of individuals; and
- specific requirements in relation to specified listed human diseases; and
- general requirements in relation to listed human diseases generally; and
- requirements relating to the manner in which an individual must comply with a requirement.

Subsection 44(6) of the Biosecurity Act provides that a section 44 determination may specify one or more requirements relating to, among other matters, a requirement for an individual to provide either a declaration as to whether the individual has received a specified vaccination within a specified previous period or evidence that the individual has received a specified vaccination within a specified previous period.

If a person fails to comply with the new entry requirements, they may contravene a civil penalty provision in the Biosecurity Act. Additionally, if a person provides false or misleading information or documents regarding entry requirements, they may commit an offence under the Criminal Code or contravene a civil penalty provision in the Biosecurity Act.

### *Preventative Measures Determination*

Subsection 51(2) of the Biosecurity Act provides that the Health Minister may make a Determination specifying one or more of the following measures to be taken by specified classes of persons:

- banning or restricting a behaviour or practice;
- requiring a behaviour or practice;
- requiring a specified person to provide a specified report or keep specified records;

- conducting specified tests on specified goods.

Subsection 51(4) of the Biosecurity Act provides that a determination made under subsection 51(2) is a legislative instrument, but section 42 (disallowance) of the Legislation Act does not apply to the determination. This is because the potential risk of such disallowance would inhibit the Commonwealth's ability to act urgently on public health advice to manage a human biosecurity risk that could threaten or harm human health as it would create uncertainty as to whether the instrument might be disallowed. In the circumstances of the Determination, disallowance would remove preventative safeguards that aim to minimise the risk of COVID-19 (including any new variants) entering, emerging, establishing or spreading in Australia.

A biosecurity measure must not be specified in a determination under subsection 51(2) of the Biosecurity Act unless the Health Minister is satisfied that the biosecurity measure is appropriate and adapted to prevent, or reduce the risk of, the disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory (see subsection 51(5)).

The Director of Human Biosecurity (the Commonwealth Chief Medical Officer) has advised the Health Minister, and the Health Minister is satisfied, that the measures in the Determination are appropriate and adapted to prevent and reduce the risk of the entry, emergence, establishment or spread of COVID-19 in Australian territory.

The Determination must specify the period during which it is in force, which must not be more than 1 year from commencement (see subsection 51(6)).

#### Emergency Requirements Amendment Determination

During a human biosecurity emergency period, the Health Minister may, in accordance with section 477 of the Biosecurity Act, determine emergency requirements that they are satisfied are necessary to prevent or control the entry, emergence, establishment or spread of the declaration listed human disease COVID-19 in Australian territory or a part of Australian territory.

Subsection 477(1) of the Biosecurity Act provides that during a human biosecurity emergency period, the Health Minister may determine any requirement that he or she is satisfied is necessary to:

- prevent or control the entry of the declaration listed human disease into Australian territory or a part of Australian territory, or the emergence, establishment or spread of the declaration listed human disease in Australian territory or a part of Australian territory; or
- prevent or control the spread of the declaration listed human disease to another country; or
- give effect to a recommendation that has been made to the Health Minister by the World Health Organization under Part III of the International Health Regulations in relation to the declaration listed human disease.

Subsection 477(2) of the Biosecurity Act provides that a determination made under subsection 477(1) is a legislative instrument, but section 42 (disallowance) of the Legislation Act does not apply to the determination. The risk of such disallowance

would inhibit the Commonwealth's ability to act urgently on public health advice to manage a human biosecurity risk that could threaten or harm human health as it would create uncertainty as to whether the instrument might be disallowed.

These emergency requirements may override any Commonwealth, state or territory law (subsection 477(5) of the Biosecurity Act). Biosecurity measures under a human biosecurity control order may continue to be imposed on an individual basis (subsection 477(6) of the Biosecurity Act).

The Australian Government has established protocols for the exercise of emergency powers under the Biosecurity Act to ensure that these powers are only used where necessary to protect the health of Australians, based on expert advice and following appropriate consultation.

## **Background**

On 5 January 2020, the WHO notified Member States under the *International Health Regulations (2005) (IHR)* of an outbreak of pneumonia of unknown cause in Wuhan city, China. On 21 January 2020 'human coronavirus with pandemic potential' became a 'listed human disease' by legislative instrument made by the Director of Human Biosecurity. On 30 January 2020, the outbreak was declared by the WHO International Regulations Emergency Committee to constitute a Public Health Emergency of International Concern.

On 11 February 2020, the WHO announced that the International Committee on Taxonomy of Viruses named the pathogen virus 'severe acute respiratory syndrome coronavirus (SARS-CoV-2)'. The international name given by WHO to the disease caused by SARS-CoV-2 is Coronavirus disease 2019 (COVID-19). On 11 March 2020, the WHO declared the outbreak of COVID-19 a pandemic.

On 18 March 2020, the Governor-General declared that a human biosecurity emergency exists regarding the listed human disease 'human coronavirus with pandemic potential' (section 475 of the Biosecurity Act, *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*). The human biosecurity emergency period is currently in force until 17 February 2022 (unless extended).

COVID-19 has entered Australia and represents a severe and immediate threat to human health in Australia as it has the ability to cause high levels of morbidity and mortality and to disrupt the Australian community socially and economically.

On 27 November 2021, the WHO announced that B.1.1.529 ('Omicron') is a new COVID-19 variant of concern. Public health measures have been put in place in Australia and around the world to address this new variant.

The Omicron variant has been spreading in Australia and is now the dominant strain of COVID-19. On 22 December 2021, the Australian Health Protection Principal Committee provided a statement on the public health implications of the Omicron variant and response options. These included that current medical evidence indicates

the Omicron variant is substantially more transmissible than the Delta variant in populations with a high previous exposure to COVID-19 or high vaccination coverage, with most recent estimates demonstrating that the number of cases are doubling every 2-3 days.

To continue to protect Australia from ongoing and new variants of COVID-19, public health measures that aim to minimise the risk of COVID-19 (and particularly new variants of COVID-19) entering, emerging, establishing or spreading in Australia should continue to be in force.

The Entry Requirements Determination will also amalgamate public health measures from two other section 44 instruments made since the beginning of the COVID-19 pandemic in March 2020 and repeal those two instruments. This is being done so the Determination contains the relevant entry requirements in one instrument instead of the relevant requirements being spread across different instruments.

### **Reliance on subsection 33(3) of the *Acts Interpretation Act 1901***

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Commencement**

The Preventative Measures Determination will commence immediately after it is registered on the Federal Register of Legislation.

The Entry Requirements Determination and Emergency Requirements Amendment Determination will commence at 1am, by legal time in the Australian Capital Territory, on 23 January 2022.

### **Consultation**

The Department of Health consulted the Department of Home Affairs, the Department of Foreign Affairs and Trade and the Attorney-General's Department.

The Ministers responsible for human health from each State and Territory and the Director of Biosecurity were also consulted, in accordance with subsection 51(7) of the Biosecurity Act for the purposes of the Preventative Measures Determination.

**Details of the Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022**

**Part 1—Preliminary**

**Section 1** provides that the name of the Entry Requirements Determination is the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022*.

**Section 2** provides that the Entry Requirements Determination commences at 1am, by legal time in the Australian Capital Territory, on 23 January 2022.

**Section 3** states that the authority for making the Entry Requirements Determination is subsection 44(2) of the Act.

**Section 4** sets out the definitions used in the Entry Requirements Determination. A note to section 4 provides that a number of expressions used in the Entry Requirements Determination are defined in the Biosecurity Act including ‘Agriculture Department’, ‘Australian territory’, ‘Health Department’, ‘landing place’ and ‘passenger’.

In the Entry Requirements Determination, an ‘accepted COVID-19 vaccine’ means a COVID-19 vaccine that is registered goods within the meaning of the *Therapeutic Goods Act 1989* or that is recognised by the Therapeutic Goods Administration. The phrase ‘COVID-19’ is defined in this section to mean the coronavirus known as COVID-19. At the time the Determination was made, the Therapeutic Goods Administration had recognised the following COVID-19 vaccines:

- AstraZeneca Vaxzevria;
- AstraZeneca COVISHIELD;
- Pfizer/Biontech Comirnaty;
- Moderna Spikevax;
- Sinovac Coronavac;
- Covaxin (Bharat Biotech);
- Sputnik V (Gamaleya Research Institute);
- BBIBP-CorV for people under 60 years of age on arrival in Australia (Sinopharm China);
- COVID-19 Vaccine Janssen (Janssen); and
- Nuvaxovid (Novavax).

A reference to the ‘Act’ in the Entry Requirements Determination means the Biosecurity Act.

A ‘connecting traveller’ means an individual who undertakes one or more connecting flights in order to undertake a relevant international flight.

The ‘Emergency Requirements Determination’ means the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency*

*Requirements—Incoming International Flights) Determination 2021*. The Emergency Requirements Determination is made under section 477 of the Biosecurity Act. As such, any requirements set out in this instrument are subject to whether the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*, made under section 475 of the Biosecurity Act, is in force.

The ‘Home Affairs Department’ means the Department administered by the Minister administering the *Australian Border Force Act 2015*. A ‘Home Affairs SES employee’ means an SES employee in the Home Affairs Department (noting that SES employee has the same meaning as in the *Public Service Act 1999*).

A ‘NAAT test’ means a test that uses nucleic acid amplification technology as the testing method. A note to the definition provides examples of these tests, such as a polymerase chain reaction test, a transcription mediated amplification test or a loop-mediated isothermal amplification test. This does not include lateral flow tests (also known as rapid antigen tests).

A ‘relevant international flight’ means a flight that commences outside Australian territory and is intended to arrive at a landing place in Australian territory and for which the scheduled departure time is at or after 1.01 am on 23 January 2022 in the place where the flight commences.

A ‘relevant official’ for the Entry Requirements Determination means any one of the following:

- a biosecurity officer;
- a chief human biosecurity officer;
- a human biosecurity officer;
- an APS employee in the Agriculture Department;
- an APS employee in the Home Affairs Department.

An APS employee is defined in the *Public Service Act 1999*.

The ‘Therapeutic Goods Administration’ means the part of the Department of Health known by that title.

**Section 5** states that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## **Part 2—Statement requirements—passengers and crew**

**Section 6** sets out the entry requirements relating to written statements made by passengers of an aircraft on a relevant international flight.

Subsection 6(1) provides that this section applies to an individual who is entering Australian territory at a landing place (in accordance with Division 2 of Part 4 of Chapter 4 of the Biosecurity Act, relating to entry points for aircraft that intend to land in Australian territory) and as a passenger of an aircraft on a relevant international flight. However, section 6 does not apply to an individual if an



exemption for the purposes of this section was granted under paragraph 8(1)(a) for the flight before the flight commenced.

Subsection 6(2) relates to the ability of the passenger to produce evidence of a statement made before boarding. The individual must be able to produce, to a relevant official, evidence that before they boarded the aircraft they made a written statement using an electronic system maintained by the Home Affairs Department or in paper form (only if exceptional circumstances prevented the individual from using an electronic system maintained by the Home Affairs Department).

The statement made by the individual must have included all of the following information (subject to matters set out in subsections 6(3) to (5) described below):

- the individual's name, date of birth, passport number, phone number and intended address while in Australian territory, email address and the flight number of the relevant international flight;
- a declaration setting out the individual's international travel history for the 14 days before the day the relevant international flight was scheduled to commence;
- a declaration that the individual is aware of the quarantine and testing requirements relating to COVID 19 that apply in the State or Territory in which the landing place is located, and the penalties for non-compliance with those requirements;
- a declaration that in the 3 days before the day the relevant international flight was scheduled to commence, the individual had not been exposed, without adequate personal protective precautions, to a person who tested positive for COVID-19 in that period;
- a declaration mentioned in subsection 6(6) (about vaccination status) if the individual was more than 12 years and 3 months old on the day the relevant international flight was scheduled to commence;
- if the statement was made in paper form, a declaration that exceptional circumstances prevented the individual from using an electronic system maintained by the Home Affairs Department (a note to this subsection provides that examples of exceptional circumstances include if the electronic system was not available to the individual or the electronic system was not available to the individual in a language that the individual understands).

Subsection 6(3) provides that the requirement to include the above information (corresponding to paragraphs 6(2)(c) to (h) of the Entry Requirements Determination) in a section 6(2) statement does not apply to the individual if, before the relevant international flight commenced, one of the following occurs:

- an exemption for the purposes of that paragraph was granted under paragraph 8(1)(b) for the flight;
- an exemption for the purposes of that paragraph that applies to the individual was granted under section 9;
- an exemption for the purposes of that paragraph was granted to the individual under section 10.

Subsection 6(4) provides that the requirement for the individual to declare their international travel history or to declare that they are aware of the quarantine and testing requirements relating to COVID-19 that apply in the relevant State or Territory

(mentioned above) does not apply to the individual if the relevant international flight is an Australian Government facilitated flight or an emergency medical evacuation flight.

Subsection 6(5) provides that the requirement for the individual to declare that they have not been exposed to a person who tested positive for COVID-19 in the 3 days before their relevant international flight was scheduled to commence (mentioned above) does not apply if an exemption for the purposes of section 11 applies to the individual under paragraph 14(1)(d) or (e) of the Entry Requirements Determination.

Subsection 6(6) provides that, a declaration about vaccination status (mentioned above) is a declaration that one of the following set of circumstances apply to the individual:

- the individual can produce evidence that they have received a course of vaccinations with one or more accepted COVID-19 vaccines in accordance with a schedule for receiving that course of vaccinations that is accepted by the Therapeutic Goods Administration and have received the last vaccination in the course of vaccinations at least 7 days before the day the relevant international flight was scheduled to commence; or
- the individual has a medical contraindication to COVID-19 vaccines and can produce evidence provided by a medical practitioner of this medical contraindication; or
- none of the above circumstances applies to the individual.

Subsection 6(7) states that if the individual made a statement mentioned in subsection 6(2) in paper form, they must provide the statement to a relevant official (regardless of whether the relevant official asks for the statement).

Subsection 6(8) states that if the individual made a statement as mentioned in subsection 6(2) electronically, they must produce evidence that the individual made the statement if a relevant official asks the individual to do so.

Subsection 6(9) provides that if the individual's statement includes a declaration about vaccination status mentioned in subsection 6(6), the individual must, if asked by a relevant official:

- produce evidence that the individual has received a course of vaccinations with one or more accepted COVID-19 vaccines in accordance with a schedule for receiving that course of vaccinations that is accepted by the Therapeutic Goods Administration and received the last vaccination in the course of vaccinations at least 7 days before the day the relevant international flight was scheduled to commence if the declaration provided that these circumstances apply to the individual; and
- produce evidence provided by a medical practitioner that the person has a medical contraindication to COVID-19 vaccines if the declaration provided that the person has a medical contraindication to COVID-19 vaccines.

Subsection 6(10) provides that the requirements in section 6 of the Entry Requirements Determination apply at the landing place.

Note 1 to this subsection provides that an individual who fails to comply with a requirement that applies to the individual under this section may contravene a civil penalty provision (see section 46 of the Biosecurity Act).

Note 2 to this subsection provides that a person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of the Biosecurity Act).

Note 3 to this subsection notes that protections for children or incapable persons who are subject to the requirements in section 6 are set out in Subdivision B of Division 2 of Part 1 of Chapter 2 of the Biosecurity Act.

Note 4 to this subsection provides that Part 2 of Chapter 11 of the Biosecurity Act deals with confidentiality of personal information collected under the Biosecurity Act.

**Section 7** sets out the entry requirements relating to written statements made by crew of an aircraft on a relevant international flight.

Subsection 7(1) provides that this section applies to an individual who is entering Australian territory at a landing place (in accordance with Division 2 of Part 4 of Chapter 4 of the Biosecurity Act, relating to entry points for aircraft that intend to land in Australian territory) and as the person in charge or a member of the crew of an aircraft on a relevant international flight. However, section 7 does not apply to an individual in this case if:

- an exemption for the purposes of section 7 was granted under paragraph 8(1)(a) of the Entry Requirements Determination for the flight before the flight commenced; or
- an exemption for the purposes of section 7 granted under section 9 before the flight commenced applies to the individual; or
- an exemption for the purposes of section 7 was granted under section 10 before the flight commenced.

Subsection 7(2) relates to the ability of the person in charge or a member of crew to produce evidence of a statement made before boarding. The individual must be able to produce, to a relevant official, evidence that before they boarded the aircraft they made a written statement using an electronic system maintained by the Home Affairs Department or in paper form (only if exceptional circumstances prevented the individual from using an electronic system maintained by the Home Affairs Department).

The statement made by the individual must have included all of the following information:

- a declaration that in the 3 days before the day the relevant international flight was scheduled to commence, the individual had not been exposed, without adequate personal protective precautions, to a person who tested positive for the coronavirus known as COVID-19 in that period;
- for a statement made in paper form, a declaration that exceptional circumstances prevented the individual from using an electronic system maintained by the Home Affairs Department (a note to this subsection

provides that examples of exceptional circumstances include if the electronic system was not available to the individual or the electronic system was not available to the individual in a language that the individual understands).

Subsection 7(3) states that if the individual made a statement mentioned in subsection 7(2) in paper form, they must provide the statement to a relevant official (regardless of whether the relevant official asks for the statement).

Subsection 7(4) states that if the individual made a statement as mentioned in subsection 7(2) electronically, they must produce evidence that the individual made the statement if a relevant official asks the individual to do so.

Subsection 7(5) provides that the requirements in section 7 of the Entry Requirements Determination apply at the landing place.

Note 1 to this subsection provides that an individual who fails to comply with a requirement that applies to the individual under this section may contravene a civil penalty provision (see section 46 of the Biosecurity Act).

Note 2 to this subsection provides that a person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 532 and 533 of the Biosecurity Act).

Note 3 to this subsection provides that Part 2 of Chapter 11 of the Biosecurity Act deals with confidentiality of personal information collected under the Biosecurity Act.

**Section 8** relates to exemptions for flights. Subsection 8(1) provides that, in exceptional circumstances, the Director of Human Biosecurity, a chief human biosecurity officer, a human biosecurity officer or a Home Affairs SES employee may grant an exemption for the purposes of section 6 or 7 for a relevant international flight. The Director of Human Biosecurity is the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer (see section 544 of the Biosecurity Act).

The Director of Human Biosecurity, a chief human biosecurity officer, a human biosecurity officer or a Home Affairs SES employee may also grant an exemption for the purposes of any of paragraphs 6(2)(c) to (h) (relating to specific information to include in a subsection 6(2) statement) for a relevant international flight.

Subsection 8(2) states that an exemption under subsection 8(1) must be in writing.

Subsection 8(3) provides that, for the purposes of the Entry Requirements Determination, an exemption under subsection 9A(1) of the Emergency Requirements Determination is taken to be an exemption under paragraph 8(1)(a) for the purposes of sections 6 and 7.

**Section 9** relates to exemptions for classes of individuals. Subsection 9(1) provides that, in exceptional circumstances, the Director of Human Biosecurity may grant an exemption for the purposes of any of paragraphs 6(2)(c) to (h) (relating to specific

information to include in a subsection 6(2) statement) or section 7 (as applicable), to a class of individuals.

Subsection 9(2) states that an exemption under subsection 8A(1) must be in writing.

Subsection 9(3) provides that, for the purposes of the Entry Requirements Determination, an exemption under subsection 9B(1) of the Emergency Requirements Determination is taken to be an exemption under subsection 9(1) for the purposes of paragraph 6(2)(f) or section 7 (as applicable).

**Section 10** relates to exemptions for individuals. Subsection 10(1) provides that in exceptional circumstances, a relevant official may grant an exemption for the purposes of any of paragraphs 6(2)(c) to (h), or section 7 of the Entry Requirements Determination (as applicable), to an individual.

Subsection 10(2) provides that exceptional circumstances are demonstrated by the individual providing a compelling reason for not complying with the paragraph or section (as applicable).

Subsection 10(3) provides that an exemption under subsection 10 (1) must be in writing.

Subsection 10(4) provides that, for the purposes of the Entry Requirements Determination, an exemption under subsection 10(1) of the Emergency Requirements Determination is taken to be an exemption under subsection 10(1) for the purposes of paragraph 6(2)(f) or section 7 (as applicable). This is to ensure that an individual will not have to obtain an exemption under two separate instruments where the requirements are similar.

### **Part 3—Negative test requirements—passengers**

**Section 11** sets out what will be considered evidence of negative test results for the purposes of the Entry Requirements Determination.

Subsection 11(1) provides that this section applies to an individual who is entering Australian territory at a landing place (in accordance with Division 2 of Part 4 of Chapter 4 of the Biosecurity Act, relating to entry points for aircraft that intend to land in Australian territory) and as a passenger of an aircraft on a relevant international flight, unless any of the following applies:

- an exemption set out in section 14 of the Entry Requirements Determination applies to the individual; or
- an exemption was granted to the individual under section 15 of the Entry Requirements Determination before the flight commenced; or
- an exemption granted under section 16 of the Entry Requirements Determination before the flight commenced applies to the individual; or
- an exemption was granted under section 17 for the flight before it commenced; or
- the flight is an Australian Government facilitated flight.

Subsection 11(2) provides that the individual must be able to produce, to a relevant official, evidence:

- in the form of the result of a test specified in subsection 11(3), that in the period mentioned in subsection 11(4) or 11(5) (as applicable) the individual was tested for COVID-19 and that the result of the test was negative; or
- in the form of a certificate provided by a medical practitioner that includes the matters specified in subsection 11(7) that, in the period mentioned in subsection 11(8), the individual was tested for COVID-19 using a rapid antigen test conducted in accordance with subsection 11(6) and the result of the test was negative.

Subsection 11(3) provides that, for the purposes of paragraph 11(2)(a), the following tests are specified:

- a NAAT test;
- a test approved under section 13 for a country or region, if the individual was in the country or region in the period mentioned in subsection 11(4) or (5) (as applicable) and the approval was in force at the beginning of that period.

Subsection 11(4) provides that, for the purposes of paragraph 11(2)(a) and subparagraph 11(3)(b)(i), the period for an individual who is not a connecting traveller is the period of 3 days before the day the relevant international flight was scheduled to commence. The period for an individual who is a connecting traveller is the period of 3 days before the day the individual's connecting flight (or, if the individual undertook more than one connecting flight, the individual's first connecting flight) was scheduled to commence. Subsection 11(3) applies to individuals to whom an extension does not apply under section 12 of the Entry Requirements Determination.

Subsection 11(5) applies to individuals to whom an extension applies under section 12 of the Entry Requirements Determination. Subsection 11(5) provides that for the purposes of paragraph 11(2)(a) and subparagraph 11(3)(b)(i), the period is the period specified in the extension made under subsection 12 of the Entry Requirements Determination.

Subsection 11(6) provides, for the purposes of subparagraph 11(2)(b)(i), a rapid antigen test is conducted in accordance with this subsection if the specimen for the test is collected, and the test is carried out, by or under the supervision of a medical practitioner.

Subsection 11(7) provides, for the purposes of paragraph 11(2)(b), that the following matters are specified for a certificate for a rapid antigen test:

- the date and time of the test;
- the name of the individual tested;
- the type of test conducted;
- the brand and make of the test;
- that the specimen for the test was collected, and the test was carried out, by or under the supervision of a medical practitioner
- the result of the test;
- the signature of the medical practitioner providing the certificate.

Subsection 11(8) provides, for the purposes of subparagraph 11(2)(b)(i) the period for an individual who is not a connecting traveller is the period of 24 hours before the scheduled departure time for the relevant international flight. The period for an individual who is a connecting traveller is the period of 24 hours before the scheduled departure time for the individual's connecting flight (or, if the individual undertook more than one connecting flight, the person's first connecting flight).

Subsection 11(9) provides that the requirements in section 11 of the Entry Requirements Determination apply at the landing place. The information in the four notes under this subsection are identical to the notes under subsection 6(10) of the Entry Requirements Determination, as set out above.

**Section 12** sets out when an extension of the period for testing, in which a person must return a negative COVID-19 test result, may be granted.

Subsection 12(1) provides that the Director of Human Biosecurity may extend the period for being tested as mentioned in paragraph 11(2)(a) for a class of individuals if it is not reasonably practicable for that class of individuals to be tested and receive test results within a period of 3 days.

Subsection 12(2) provides that an extension under subsection 12(1) must be in writing.

Subsection 12(3) provides that, for the purposes of the Entry Requirements Determination, an exemption under subsection 12(1) of the Emergency Requirements Determination is taken to be an exemption under subsection 12(1). This is to ensure that an individual will not have to obtain an exemption under two separate instruments where the requirements are similar.

**Section 13** sets out the circumstances in which tests other than NAAT tests may be approved.

Subsection 13(1) provides that the Director of Human Biosecurity may approve a kind of test for COVID-19 for a country or region if a NAAT test is not reasonably available in the country or region.

Subsection 13(2) provides that an approval under subsection 13(1) must be in writing.

Subsection 13(3) provides that, for the purposes of the Entry Requirements Determination, an approval under subsection 13(1) of the Emergency Requirements Determination is taken to be an approval under subsection 13(1). This is to ensure that an approval will not be required to be made under two separate instruments where the requirements are similar.

**Section 14** sets out general exemptions to the requirement to produce evidence of a negative test for COVID-19 in the 3 days before the relevant international flight or connecting flight (as the case may be) was scheduled to commence.

Subsection 14(1) sets out that an exemption for the purposes of section 11 applies in five circumstances set out in the subsection, which are described below. A person will not be required to ‘apply’ for such an exemption, provided they meet the relevant requirements set out in section 14.

An exemption applies to an individual who was less than 5 years old on the day the relevant international flight was scheduled to commence.

An exemption applies to an individual who is carrying evidence, provided by a medical practitioner within 30 days before the day the relevant international flight was scheduled to commence, that the individual has a medical condition that prevents the individual from taking a test for COVID-19.

An exemption applies to an individual who is carrying a certificate, provided by a medical practitioner within 30 days before the day the relevant international flight was scheduled to commence, that includes the matters mentioned in subsection 14(2), regarding certificates for recovered individuals.

An exemption applies to an individual who is a passenger of an aircraft on a relevant international flight that is an emergency medical evacuation flight and who meets the requirement mentioned in subsection 14(3).

An exemption applies to an individual who is a passenger of an aircraft on a relevant international flight that is an emergency medical evacuation flight and who is accompanying and supporting an individual (the patient) mentioned in paragraph 14(1)(d) of the Entry Requirements Determination (described in the paragraph above) because of the patient’s medical condition.

Subsection 14(2) provides that the matters that are required to be included in a certificate (provided by a medical practitioner within 30 days before the day the relevant international flight was scheduled to commence) for an individual for an exemption under this section to apply are the following:

- the day the certificate is provided;
- a statement to the effect that the individual has had COVID-19 but is now recovered and is not considered to be infectious;
- the day when there was first a positive result of a NAAT test or a rapid antigen test for COVID-19 for the individual;
- a statement to the effect that, on the day the certificate is provided it has been at least 7 days since the day there was first a positive test result for COVID-19 for the individual and, if the individual had symptoms of COVID-19, the individual has not had a fever, or respiratory symptoms of COVID-19, in the last 72 hours.

The intention of subsection 14(2) is to provide an exemption from the requirement to return a negative COVID-19 test to persons who, due to having contracted COVID-19 in the past, may return a positive COVID-19 test after their infectious period has passed due to the shedding of the virus.

Subsection 14(3) provides the requirement for an exemption to apply to an individual (referred to as the patient in this subsection), or an individual accompanying and



supporting the patient, who is a passenger of an aircraft on a relevant international flight that is an emergency medical evacuation flight.

The requirement is that the patient (or an individual accompanying and supporting the patient) is carrying evidence, provided by a medical practitioner, that:

- the patient has a serious medical condition; and
- the patient requires emergency management or an effective treatment of the medical condition that is available in Australian territory, and was not reasonably available, in time to benefit the patient, in the country where the relevant international flight commenced, and (if the patient is a connecting traveller) was not reasonably available, in time to benefit the patient, in the country where the patient's connecting flight commenced (or, if the patient undertook more than one connecting flight, any of the countries where the connecting flights commenced); and
- the lack of the management or treatment mentioned above caused an immediate exacerbation of the patient's medical condition and the need for the patient to enter Australian territory within 48 hours.

**Section 15** sets out when an exemption due to exceptional circumstances may be granted in relation to the requirement to produce evidence of a negative test for COVID-19 in the 3 days before the relevant international flight or connecting flight (as the case may be) was scheduled to commence.

Subsection 15(1) provides that a relevant official may grant an exemption for the purposes of section 11 to an individual in exceptional circumstances.

Subsection 15(2) provides that exceptional circumstances are demonstrated by the individual providing a compelling reason for not complying with requirement in subsection 11(2).

Subsection 15(3) provides that an exemption under subsection 15(1) must be in writing.

Subsection 15(4) provides that, for the purposes of the Entry Requirements Determination, an exemption under subsection 15(1) of the Emergency Requirements Determination is taken to be an exemption under subsection 15(1). This is to ensure that an individual will not have to obtain an exemption under two separate instruments where the requirements are similar.

**Section 16** sets out when an exemption to the requirement to produce evidence of a negative test for COVID-19 in the 3 days before the relevant international flight or connecting flight (as the case may be) was scheduled to commence may be granted to a class of individuals.

Subsection 16(1) provides that the Director of Human Biosecurity may grant an exemption for the purposes of section 11 to a class of individuals if no test for COVID-19 is reasonably available to that class of individuals.

Subsection 16(2) provides that an exemption under subsection 16(1) must be in writing.

Subsection 16(3) provides that, for the purposes of the Entry Requirements Determination, an exemption under subsection 16(1) of the Emergency Requirements Determination is taken to be an exemption under subsection 16(1).

**Section 17** sets out when an exemption to the requirement to produce evidence of a negative test for COVID-19 in the 3 days before the relevant international flight or connecting flight (as the case may be) was scheduled to commence may be granted to a flight.

Subsection 17(1) provides that the Director of Human Biosecurity, a chief human biosecurity officer, a human biosecurity officer, or a Home Affairs SES employee may grant an exemption for the purposes of section 11 for a relevant international flight in exceptional circumstances.

Subsection 17(2) provides that an exemption made under subsection 17(1) must be in writing.

Subsection 17(3) provides that, for the purposes of the Entry Requirements Determination, an exemption under subsection 16A(1) of the Emergency Requirements Determination is taken to be an exemption under subsection 17(1).

### **Schedule 1—Repeals**

**Item 1** provides that the whole of the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2021* will be repealed upon the commencement of the Determination (being 21 January 2022).

**Item 2** provides that the whole of the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination (No. 2) 2021* will be repealed upon the commencement of the Determination.

These instruments are being repealed as the entry requirements in these instruments are being amalgamated into the Entry Requirements Determination or are otherwise not required in Australia's ongoing public health response to the COVID-19 pandemic.

## **Details of the *Biosecurity (Preventative Biosecurity Measures—Incoming International Flights) Determination 2022***

### **Part 1—Preliminary**

**Section 1** provides that the name of the instrument is the *Biosecurity (Preventative Biosecurity Measures—Incoming International Flights) Determination 2022*.

**Section 2** provides that the Preventative Measures Determination commences immediately after it is registered.

**Section 3** states that the authority for making the Preventative Measures Determination is subsection 51(2) of the Biosecurity Act.

**Section 4** sets out the definitions used in the Preventative Measures Determination. A number of expressions used in the Preventative Measures Determination are defined in the Biosecurity Act, including ‘Agriculture Department’, ‘Australian territory’, ‘landing place’ and ‘passenger’. The term ‘Act’ means the Biosecurity Act.

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

The term ‘Home Affairs Department’ means the Department administered by the Minister administering the *Australian Border Force Act 2015*.

A ‘relevant international flight’ means a flight that commences outside Australian territory and is intended to arrive at a landing place in Australian territory and for which the scheduled departure time is at or after 12.01 am, by legal time in the Australian Capital Territory, on the day after the Preventative Measures Determination is registered.

A ‘relevant official’ means any of the following, which are defined in the Biosecurity Act: a biosecurity officer; a chief human biosecurity officer; and a human biosecurity officer. A ‘relevant official’ also means an APS employee in the Agriculture Department or the Home Affairs Department. An APS employee is defined in the *Public Service Act 1999*.

The phrase ‘suitable face mask or face covering’ means a face mask or face covering that meets the requirements of section 5 of the Preventative Measures Determination as set out below.

**Section 5** sets out the requirements relating to suitable face masks and face coverings.

Subsection 5(1) provides that this section sets out the requirements that a face mask or face covering must meet to be a ‘suitable face mask or face covering’.

Subsection 5(2) states that the face mask or face covering must be a medical or non-medical face mask or face covering that completely covers the wearer’s nose, mouth and chin without gaping and can be secured to the wearer’s head with ties or ear loops.

Subsection 5(3) states that the face mask or face covering must be made of multiple layers of tightly woven materials such as cotton or linen. Alternatively, the face mask or face covering must be made as follows:

- 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;
- the rest of the face mask or face covering must be made of multiple layers of tightly woven materials such as cotton or linen;
- there must be a tight seal between the transparent material and the rest of the face mask or face covering.

Permitting this alternative method of making a face mask or face covering aims to allow people to wear a face mask or face covering which enables persons with a hearing impediment to lip read the wearer's lips as they speak.

**Section 6** provides that the Preventative Measures Determination relates to human coronavirus with pandemic potential, commonly known as COVID-19.

**Section 7** provides that the Preventative Measures Determination is made for the purposes of preventing the behaviour or practice, by persons entering Australian territory on flights that commence outside Australian territory, of unprotected exhalation while on those flights and while in transit before those flights.

**Section 8** sets out the period the Preventative Measures Determination is in force. The Preventative Measures Determination is in force during the period beginning on the day it commences and ending at the end of 1 year beginning on the day the Preventative Measures Determination commences, which is the maximum period a section 51 determination may be in force (subsection 51(6) of the Biosecurity Act).

## **Part 2—Biosecurity measures to be taken by specified classes of persons**

**Section 9** sets out the requirements that apply to passengers and crew on a relevant international flight regarding the wearing of face masks or face coverings.

Subsection 9(1) provides that, subject to subsection 9(5), a person who is a passenger of an aircraft on a relevant international flight must wear a suitable face mask or face covering at all times during the flight period and, if the person is a connecting traveller, at all times during the connecting period for the person when the person is in close proximity to other persons. A person who meets these criteria is not required to wear a suitable face mask or face covering in the following circumstances:

- for the minimum time required to consume food, beverages or oral medication;
- when the person is required by law to remove the face mask or face covering;
- for a person assisting a person who is deaf or hearing-impaired (the assisted person)—when communicating with the assisted person;
- during the period that, while the person is on an aircraft, the person in charge of the aircraft permits the removal of face masks and face coverings for a period for operational reasons;
- if it is necessary to remove the face mask or face covering in an emergency (including a medical emergency) or to meet safety requirements.

Subsection 9(2) provides that, subject to subsection 9(5), a person who is the person in charge, or a member of the crew, of an aircraft on a relevant international flight must wear a suitable face mask or face covering at all times during the flight period and, if the person is a connecting traveller, at all times during the connecting period for the person when the person is in close proximity to other persons. A person who meets these criteria is not required to wear a suitable face mask or face covering in the following circumstances:

- for the minimum time required to consume food, beverages or oral medication;
- when the person is required by law to remove the face mask or face covering;
- 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);
- during the period that, while the person is on an aircraft, the person in charge of the aircraft permits the removal of face masks and face coverings for a period for operational reasons;
- if it is necessary to remove the face mask or face covering in an emergency (including a medical emergency) or to meet safety requirements.

Subsection 9(3) provides that the flight period referenced in subsections 9(1) and 9(2) above is the period that begins when the person boards the aircraft, and ends when the person disembarks the aircraft.

Subsection 9(4) sets out what is meant by the reference to a connecting period in subsections 9(1) and 9(2) above. When the connecting period for a person who is a connecting traveller begins will depend on the circumstances of their connecting flight or flights.

If the person boards their connecting flight (or, if they undertake 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, then their connecting period begins when the person boards the connecting flight (or first connecting flight).

*Example 1*

Shyama is flying from London to Sydney via Dubai. The flight from London to Dubai is the connecting flight and the flight from Dubai to Sydney is the relevant international flight. The flight from London departs and arrives in Dubai 7 hours later at 10pm by legal time in Dubai. The flight from Dubai to Sydney is scheduled to depart at 11.30pm by legal time in Dubai, a layover of 90 minutes. In this case, Shyama boards her connecting flight to Australia less than 72 hours before it is scheduled to depart, and her connecting period would begin when she boards the London to Dubai flight.

If the person boards their connecting flight (or, if they undertake 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 into Australian territory, then their connecting period begins 72 hours before the scheduled departure time of the relevant international flight (or first connecting flight).

### *Example 2*

Lachlan is flying from Buenos Aires, Argentina, to Houston, Texas, USA, then Houston to Honolulu, Hawaii, then Honolulu to Melbourne. The flight from Honolulu to Melbourne is the relevant international flight.

Lachlan's flight from Buenos Aires departs on 1 February 2022 at 8am by legal time in Buenos Aires and takes 10 hours to fly to Houston, where the flight arrives at 3pm by legal time in Houston that same day. Lachlan stays in Houston for another 32 hours until his flight to Honolulu departs at 11pm Houston time on 3 February 2022 and has a flight duration of 8 hours, landing at 3am Honolulu time on 4 February 2022. Lachlan's flight from Honolulu to Melbourne departs 30 hours later at 9am Honolulu time on 5 February 2022. Factoring in flight time and layover time in these cities, Lachlan will board his first connecting flight from Buenos Aires more than 72 hours (approximately 80 hours) before the scheduled departure time of his flight from Honolulu to Melbourne. As such, his connecting period would begin 72 hours before his 9am Honolulu to Melbourne flight (while he was still on the flight from Buenos Aires to Houston).

The connecting period for a person ends when the person boards the aircraft for the relevant international flight (that is, the flight that arrives in Australian territory).

Subsection 9(5) provides that the requirement in subsection 9(1) or 9(2) does not apply to a person if an exemption under section 10 of the Preventative Measures Determination applies to the person or an exemption under section 11 of the Preventative Measures Determination was granted to the person before the flight commenced.

Note 1 to this subsection provides that a person who fails to comply with a biosecurity measure that applies to the person under the Preventative Measures Determination may contravene a civil penalty provision (see section 52 of the Biosecurity Act). Note 1 also refers to Part 6 of Chapter 9 of the Biosecurity Act in relation to civil penalties.

Note 2 to this subsection provides that the reader should refer to Subdivision B of Division 2 of Part 1 of Chapter 2 of the Biosecurity Act for protections for children or incapable persons who are subject to a biosecurity measure in the Preventative Measures Determination.

**Section 10** sets out general exemptions to the requirement to wear a face covering or face mask in section 9 of the Preventative Measures Determination.

Subsection 10(1) provides that an exemption from the requirement in subsection 9(1) or 9(2) applies to a person who is carrying evidence provided by a medical practitioner that the person has a medical condition that either prevents the person from wearing a suitable face mask or face covering, or would make wearing a suitable face mask or face covering difficult.

Subsection 10(2) provides that an exemption from the requirement in subsection 9(1) applies to a person who was less than 12 years old on the day the relevant

international flight was scheduled to commence. This means that parents of children under 12 years old on the day of the relevant international flight do not have to specifically apply for this exemption, provided this requirement is met.

**Section 11** sets out that an exemption to the requirement to wear a face covering or face mask in section 9 of the Preventative Measures Determination may be granted in exceptional circumstances.

Subsection 11(1) provides that, in exceptional circumstances, a relevant official (as defined in section 4 of the Preventative Measures Determination) may grant an exemption from the requirement in subsection 9(1) or 9(2) to a person.

Subsection 11(2) explains that exemptional circumstances are demonstrated by the person providing a compelling reason for not complying with the requirements set out in subsection 9(1) or 9(2).

Subsection 11(3) provides that an exemption made under subsection 11(1) must be in writing.

Subsection 11(4) states that an exemption made under subsection 8(1) of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Determination 2021*, which is currently in force under section 477 of the Biosecurity Act, is taken also to be an exemption made under subsection 11(1) of the Preventative Measures Determination from the requirement in subsection 9(1) or 9(2) as applicable.

**Details of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Amendment (No. 1) Determination 2022***

**Section 1** provides that the name of the Emergency Requirements Amendment Determination is the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Amendment (No. 1) Determination 2022*.

**Section 2** provides that the Emergency Requirements Amendment Determination commences at 1am, by legal time in the Australian Capital Territory, on 23 January 2022.

**Section 3** states that the authority for making the Emergency Requirements Amendment Determination is subsection 477 of the Biosecurity Act.

**Section 4** provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1—Amendments**

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

**Item 1**

Item 1 inserts new paragraph (aa) before paragraph (a) of the note to the heading of section 4 of the Emergency Requirements Determination. Section 4 of the Emergency Requirements Determination sets out definitions, and the note lists expressions used in the Emergency Requirements Determination that are defined in the Biosecurity Act. New paragraph (aa) includes ‘Agriculture Department’ in this list of expressions.

**Items 2 to 5**

Items 2 to 5 amend section 4 of the Emergency Requirements Determination, which sets out the definitions used in the Emergency Requirements Determination.

**Item 2** repeals the definitions ‘Australia Border Force’ and ‘Australian Border Force employee’ from section 4. This is because these definitions are being replaced by references to the Home Affairs Department and any relevant employees as in Item 3 and Item 5.

**Item 3** inserts the definitions of the ‘Home Affairs Department’, ‘Home Affairs SES employee’ and ‘NAAT test’ into section 4. A reference to the ‘Home Affairs Department’ means the Department administered by the Minister administering the *Australian Border Force Act 2015*. A ‘Home Affairs SES employee’ means an SES employee (as defined in the *Public Service Act 1999*) in the Home Affairs Department.



A 'NAAT test' means a test that uses nucleic acid amplification technology as the testing method. A note to this definition provides examples of these tests, such as a polymerase chain reaction test, a transcription mediated amplification test or a loop-mediated isothermal amplification test.

**Item 4** repeals the definition of 'PCR test' as this is being replaced by the definition of 'NAAT test' set out in Item 3 above.

**Item 5** repeals paragraph (d) of the definition of 'relevant official' and substitutes new paragraphs (d) and (e). New paragraph (d) provides that an APS employee in the Agriculture Department is a relevant official. New paragraph (e) provides that an APS employee in the Home Affairs Department is a relevant official. The term 'APS employee' is defined in the *Public Service Act 1999*.

**Item 6** inserts new paragraphs 9(aa) and 9(ab) after paragraph 9(a). Section 9 of the Emergency Requirements Determination provides that a person who is a passenger or a member of the crew or the person in charge of an aircraft on a relevant international flight must not enter Australian territory if, within 3 days before the day the flight was scheduled to commence, the person had been exposed to a person who tested positive for COVID-19 in that period. However, this requirement does not apply in the circumstances listed in paragraphs 9(a) to (c).

New paragraphs 9(aa) and 9(ab) provide additional circumstances in which this requirement does not apply.

New paragraph 9(aa) applies if an exemption was granted under section 9A of the Determination for the flight before the flight commenced.

New paragraph 9(ab) applies if an exemption that applies to the person was granted under section 9B before the flight commenced.

**Item 7** inserts new sections 9A and 9B after section 9 of the Emergency Requirements Determination. The exemption provisions in new sections 9A and 9B are mirrored in the Entry Requirements Determination.

New section 9A provides for exemptions to be granted for flights.

New subsection 9A(1) provides that the Director of Human Biosecurity, a chief human biosecurity officer, a human biosecurity officer or a Home Affairs SES employee may grant an exemption for the purposes of section 9 for a relevant international flight in exceptional circumstances. New subsection 9A(2) provides that an exemption under subsection 9A(1) must be in writing.

New section 9B provides for exemptions to be granted for classes of persons.

New subsection 9B(1) provides that the Director of Human Biosecurity may grant an exemption from the requirement in section 9 to a class of persons in exceptional circumstances. New subsection 9B(2) provides that an exemption under subsection 9B(1) must be in writing.

**Item 8** amends the heading of section 10 of the Emergency Requirements Determination to insert the words “for individuals” after the word “Exemptions”. This is a technical change to differentiate section 10 exemptions from exemptions set out in new sections 9A and 9B.

**Item 9** amends paragraph 11(1)(a) of the Emergency Requirements Determination to omit the words “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”, substitute the words “evidence mentioned in subsection (1A)”. This amendment is consequential to the amendment in Item 11 to set the evidence required in a separate subsection.

**Item 10** adds new paragraphs 11(1)(e) and 11(1)(f) at the end of subsection 11(1) of the Emergency Requirements Determination. These new paragraphs provide additional circumstances in which the requirement that a person who is a passenger of an aircraft on a relevant international flight must not enter Australian territory does not apply.

New paragraph 11(1)(e) provides that the requirement does not apply if an exemption was granted under section 16A of the Emergency Requirements Determination for the flight before the flight commenced.

New paragraph 11(1)(f) provides that the requirement does not apply if the flight is an Australian Government facilitated flight.

**Item 11** inserts new subsection 11(1A) after subsection 11(1).

New subsection 11(1A) provides that, for the purposes of paragraph 11(1)(a), the evidence is evidence:

- in the form of the result of a test specified in subsection 11(4), that in the period mentioned in subsection 11(2) or 11(3) (as applicable) the person was tested for the coronavirus known as COVID-19 and that the result of the test was negative; or
- in the form of a certificate provided by a medical practitioner that includes the matters specified in subsection 11(6) that, in the period mentioned in subsection 11(7), the person was tested for the coronavirus known as COVID-19 using a rapid antigen test conducted in accordance with subsection 11(5) and the result of the test was negative.

This amendment has been made to reflect the increasing use of rapid antigen tests to detect COVID-19.

**Item 12** amends subsections 11(2) and 11(3) of the Emergency Requirements Determination to omit the words “paragraph (1)(a)” and substitute “paragraph (1A)(a)” to reflect the amendment in Item 11 above.

**Items 13 to 15** amend subsection 11(4) of the Emergency Requirements Determination. Subsection 11(4), as amended, sets out which tests are specified for the purposes of the evidence required by paragraph 11(1A)(a).

**Item 13** amends subsection 11(4) of the Emergency Requirements Determination to omit the words “paragraph (1)(a), sufficient evidence means the result of” and substitute the words “paragraph (1A)(a), the following tests are specified”.

**Item 14** repeals paragraph 11(4)(a), which refers to a PCR test (and this definition has been repealed by Item 4), and substitutes a new paragraph 11(4)(a) to refer to a NAAT test.

**Item 15** inserts the words “or region” after the words “country (wherever occurring)” in paragraph 11(4)(b) of the Emergency Requirements Determination. This amendment aligns with the amendments in Items 19 and 20.

**Item 16** inserts new subsections 11(5) to (7) into the Emergency Requirements Determination after subsection 11(4) (but before the note), relating to the requirements for a result from a rapid antigen test.

New subsection 11(5) provides that, for the purposes of subparagraph 11(1A)(b)(i), a rapid antigen test is conducted in accordance with this subsection if the specimen for the test is collected, and the test is carried out, by or under the supervision of a medical practitioner.

New subsection 11(6) provides that, for the purposes of paragraph 11(1A)(b), the matters specified for a certificate for a rapid antigen test are:

- the date and time of the test;
- the name of the person tested;
- the type of test conducted;
- the brand and make of the test;
- that the specimen for the test was collected, and the test was carried out, by or under the supervision of a medical practitioner;
- the result of the test; and
- the signature of the medical practitioner providing the certificate.

New subsection 11(7) provides that, for the purposes of subparagraph 11(1A)(b)(i), the period for a person who is not a connecting traveller is the period of 24 hours before the scheduled departure time for the relevant international flight. The period for a person who is a connecting traveller is the period of 24 hours before the scheduled departure time for the person’s connecting flight (or, if the person undertook more than one connecting flight, the person’s first connecting flight).

**Item 17** adds the words “for classes of persons” at the end of the heading of section 12 of the Emergency Requirements Determination. This is to make clear that section 12 relates to a class of persons.

**Item 18** amends subsection 12(1) to omit the words “paragraph 11(1)(a) for a class of persons if is”, and substitutes the words “paragraph 11(1A)(a) for a class of persons if it is”. This amendment is consequential to the amendment in Item 11 described above.

**Item 19** amends the heading of section 13 of the Emergency Requirements Determination to omit the words “PCR tests”, and substitutes “NAAT tests for

countries or regions”. This amendment has been made to reflect the repeal of the definition of ‘PCR test’ and inclusion of the definition of ‘NAAT test’, and is consequential to the amendment in Item 20.

**Item 20** amends subsection 13(1) to omit the words “country if a PCR test is not reasonably available in the country”, and substitutes “country or region if a NAAT test is not reasonably available in the country or region”.

Section 13, as amended, will permit the Director of Human Biosecurity to approve a kind of test for COVID-19 where a NAAT test is not reasonably available in a country or region. This also permits the Director of Human Biosecurity to approve a kind of tests other than NAAT tests for geographical areas (regions) that may be larger or smaller than individual countries where appropriate.

**Item 21** amends the heading of section 14 of the Emergency Requirements Determination to insert the words “for individual persons” after the word “Exemptions”. This is to make clear that section 14 relates to exemptions for individuals.

**Item 22** amends paragraph 14(2)(c) of the Emergency Requirements Determination to omit the words “a PCR test”, and substitutes the words “a NAAT test or a rapid antigen test”. This also aligns with the amendments in Items 4 and 11.

**Item 23** amends the heading of section 15 of the Emergency Requirements Determination to insert the words “for individual persons” after the word “Exemptions”. This is to make clear that section 15 relates to exemptions for individuals.

**Item 24** amends the heading of section 16 of the Emergency Requirements Determination to insert the words “for classes of persons” after the word “Exemptions”. This is to make clear that section 16 relates to exemptions for classes of persons.

**Item 25** adds new section 16A at the end of Part 4 of the Emergency Requirements Determination. New section 16A sets out exemptions for flights in exceptional circumstances.

New subsection 16A(1) provides that the Director of Human Biosecurity, a chief human biosecurity officer, a human biosecurity officer or a Home Affairs SES employee may grant an exemption for the purposes of paragraph 11(1)(a) for a relevant international flight in exceptional circumstances.

New subsection 16A(2) provides that an exemption under subsection 16A(1) must be in writing.

**Item 26** amends paragraph 17(b) to repeal the paragraph and substitute a new paragraph 17(b). Section 17 of the Emergency Requirements Determination imposes requirements on the operator of an aircraft on a relevant international flight to 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 each person on the

aircraft, or passengers (as the case may be), complied with relevant conditions or provided evidence of specified matters in the section (provided those persons were not covered by a relevant exemption).

New paragraph 17(b) provides that, unless the flight is an Australian Government facilitated flight, the operator must not land an aircraft on a relevant international flight in Australian territory unless they took all reasonable steps to ensure that each passenger on the aircraft, not covered by an exemption mentioned in paragraph 11(1)(b), (c), (d) or (e), 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.

This amendment is consequential to the amendments to the Emergency Requirements Determination in Item 10.