

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2022

Biosecurity (Exit Requirements) Determination 2022

Purpose

These amendments change the existing entry requirements and make a new exit requirement in line with Australia's next phase to responding to the COVID-19 pandemic in the context of Australia's high vaccination rates and the resumption of international travel.

The amendments to the existing entry requirements remove a number of the requirements for international travel by air and establish similar requirements for international travel by sea. These changes will help maintain the integrity of Australia's border when responding to the COVID-19 pandemic in a measured and proportionate way.

The Health Minister, on advice from the Chief Medical Officer, has also made a new exit requirement to commence after the Overseas Travel Ban is lifted to require outgoing travellers to provide their vaccination status to a relevant official upon request. This will compliment airline policies not to uplift unvaccinated travellers.

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

- The *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2022* (Entry Requirements Amendment Determination); and
- The *Biosecurity (Exit Requirements) Determination 2022* (Overseas Exit Determination).

The Entry Requirements Amendment Determination was made under subsection 44(2) of the *Biosecurity Act 2015* (Biosecurity Act). The Overseas Exit Determination was made under subsection 45(2) of the Biosecurity Act.

The Entry Requirements Amendment Determination makes several amendments to the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022*, including:

- removing requirements of passengers of aircraft on incoming international flights to:
 - provide evidence of a negative test to COVID-19; and
 - declare that in the 3 days before the day the relevant international flight was scheduled to commence, they had not been exposed to a person who tested positive for COVID- 19 in that period; and
- extending the entry requirements to include all vessels that arrive to Australian territory by sea.

Authority

The Biosecurity Act provides the primary legislative means and a regulatory framework for the Australian Government to manage the risk of contagion of a listed human disease or any other infectious human disease.

The Entry Requirements Amendment Determination and Overseas Exit Determination are legislative instruments for the purposes of the *Legislation Act 2003* (Legislation Act).

Section 44 of the Biosecurity Act

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 Entry Requirements Amendment 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;
- specific requirements in relation to specified listed human diseases;
- general requirements in relation to listed human diseases generally; and
- requirements relating to the way an individual must comply with a requirement.

Subsection 44(6) of the Biosecurity Act provides that a subsection 44(2) 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 a determination made under subsection 44(2), they may contravene a civil penalty provision in the Biosecurity Act. Additionally, if a person provides false or misleading information or documents they may commit an offence under the Criminal Code or contravene a civil penalty provision in the Biosecurity Act.

The Health Minister, on advice from the CMO, is satisfied that the Entry Requirements Amendment Determination is appropriate or proportionate to the risk of preventing entry into or spread of COVID-19 in Australia.

Section 45 of the Biosecurity Act

Subsection 45(1) provides that section 45 applies for the purpose of preventing a listed human disease from spreading to another country.

Subsection 45(2) of the Biosecurity Act provides that the Health Minister may determine one or more requirements for individuals who are leaving Australian territory, or for operators of outgoing passenger aircrafts or vessels.

Subsection 45(6) of the Biosecurity Act provides that a determination made under subsection 45(2) determination may specify one or more requirements relating to, among other matters, a requirement for an individual to provide a declaration as to whether the individual has received a specified vaccination.

Subsection 45(3) of the Biosecurity Act provides that a determination made under subsection 45(2) 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.

If a person fails to comply with a determination made under subsection 45(2), they may contravene a civil penalty provision in the Biosecurity Act. Additionally, if a person provides false or misleading information or documents they may commit an offence under the Criminal Code or contravene a civil penalty provision in the Biosecurity Act.

The Health Minister, on advice from the CMO, is satisfied that the requirements are appropriate or proportionate to the risk of preventing the spread of COVID-19 to other countries. Unvaccinated travellers pose a risk to the community they are in and the location's hospital system as they are at greater risk of serious illness or death if they contract COVID-19, and are more likely to transmit the infection to others.

Background

On 5 January 2020, the World Health Organization (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' under section 42 of the Biosecurity Act (see the *Biosecurity (Listed Human Diseases) Determination 2016*). 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 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 April 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.

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 Entry Requirements Amendment Determination and the Overseas Exit Determination will commence on 18 April 2022.

Consultation

The Attorney-General’s Department, the Department of Agriculture, Water and the Environment, the Department of Home Affairs and the Department of Infrastructure, Transport, Regional Development and Communications were consulted.

ATTACHMENT

Details of the Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2022

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

Section 2 provides that the Entry Requirements Amendment Determination commences on 18 April 2022.

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

Section 4 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.

Schedule 1 – Amendments

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

Item 1 repeals the definitions ‘connecting traveller’ and ‘NAAT test’ from section 4.

Item 2 inserts the definition of ‘relevant international voyage’ to section 4 as being a voyage of a vessel:

- (a) that commences outside Australian territory and is intended to arrive at a port in Australian territory; and
- (b) for which the scheduled departure time is on or after 18 April 2022.

Item 3 repeals the Part 2 heading and substitutes it with “Part 2—Requirements for passengers on flights”.

Item 4 omits “(3) to (5)” in subsection 6(2) and substitutes it with “(3) and (4)”, as per the amendment in item 8.

Item 5 repeals paragraphs 6(2)(d) and (f) as there is no longer a requirement to declare international travel history 14 days prior to travel (noting the amendment as per item 16 and the addition of section 16) or that in the 3 days before the day the relevant international flight was scheduled to commence the individual had not been exposed to a person who tested positive to COVID-19.

Item 6 omits “(d), (e), (f),” in subsection 6(3) and substitutes it with “(e),”, as per the amendment in item 5.

Item 7 omits “Paragraphs (2)(d) and (e) do” in section 6(4) and substitutes it with “Paragraph (2)(e) does”, as per the amendment in item 5.

Item 8 repeals subsection 6(5) as the declaration that in the 3 days before the day the relevant international flight was scheduled to commence the individual had not been exposed to a person who tested positive to COVID-19 is no longer a requirement.

Item 9 repeals section 7 regarding crew statements.

Item 10 omits “or 7” in paragraph 8(1)(a), as per the amendments in item 9.

Item 11 omits “sections 6 and 7” in subsection 8(3) and substitutes it with “section 6”, as per the amendment in item 9.

Item 12 omits “, or section 7 (as applicable),” in subsection 9(1) as per the amendment in item 9.

Item 13 omits “or section 7 (as applicable)” in subsection 9(3) as per the amendment in item 9.

Item 14 omits “, or section 7 (as applicable),” in subsection 10(1) as per the amendment in item 9.

Item 15 omits “, or section 7 (as applicable),” in subsection 10(4) as per the amendment in item 9.

Item 16 repeals Part 3 as there is no longer a requirement for a negative test for COVID-19 and substitutes the following:

A heading with ‘Part 3—Requirements for individuals on voyages’ and subheading ‘Division 1—Statements by individuals’ is added.

Section 11 sets out requirements for statements by individuals for international voyages.

Subsection 11(1) provides that section 11 applies to an individual who is entering Australian territory at a port as per the Biosecurity Act and as a passenger of a vessel on a relevant international voyage, unless:

- an exemption was granted under paragraph 12(1)(a) before the voyage commenced; or
- the person is in charge or a crew member of the vessel and has had no interaction with passengers on the voyage and does not intend to disembark from the vessel while in Australian territory.

Subsection 11(2) provides that the individual must be able to produce, to a relevant official, evidence that a statement in writing using an electronic system maintained by the Home Affairs Department or in paper form, if exceptional circumstances prevented the person from using the Home Affairs Department’s system. Relevantly paragraphs (c) to (g) provide that the statement includes:

- (c) details about the individual;
- (d) a declaration that individual is aware of the quarantine and testing requirements of the State or Territory in which the port is located and the penalties for non-compliance;

- (e) their vaccination status, if the person was more than 12 years and 3 months old on the day the relevant international voyage was scheduled to commence;
- (f) 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; and
- (g) if the statement was not made before the individual embarked onto the vessel for the voyage—a declaration that exceptional circumstances prevented the individual from making the statement before the individual embarked onto the vessel for the voyage.

Subsection 11(2) also notes the following as examples of using a paper form for the statement:

- (a) the electronic system was not available to the individual; and
- (b) the electronic system was not available to the individual in a language that the individual understands.

Subsection 11(3) states that the time for the requirements of subsection 11(2) is when the individual embarked onto the vessel for the voyage or the end of the voyage, if exceptional circumstances prevented the individual from making the statement before the individual embarked onto the vessel for the voyage.

Subsection 11(4) states that paragraphs (2)(c), (d), (e), (f) or (g) do not apply to an individual if, before the relevant international voyage commenced:

- an exemption for the purposes of that paragraph was granted under paragraph 12(1)(b) for the voyage; or
- an exemption for the purposes of that paragraph that applies to the individual was granted under section 13; or
- an exemption for the purposes of that paragraph was granted to the individual under section 14.

Subsection 11(5) states that a declaration that an individual is aware of the quarantine and testing requirements relating to COVID-19 that apply in the State or Territory in which the port is located and the penalties for non-compliance with those requirements does not apply if the relevant international voyage is:

- an Australian Government facilitated voyage; or
- an emergency medical evacuation voyage.

Subsection 11(6) states a declaration of vaccination status is a declaration of which one of the following apply:

- (a) 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 (TGA) (whether or not the individual has also received a booster dose of an accepted COVID-19 vaccine); and
 - received the last vaccination in the course of vaccinations at least 7 days before the day the relevant international voyage was scheduled to commence; and
 - can produce evidence of the matters of the above;
- (b) the individual:

- has a medical contraindication to COVID-19 vaccines and can produce evidence provided by a medical practitioner of the matter mentioned in subparagraph; or
- (c) neither paragraph (a) nor (b) applies to the individual.

Subsection 11(7) provides that if the individual made a statement in paper form, the individual must provide the statement to a relevant official.

Subsection 11(8) states that if the individual made a statement electronically, the individual must produce evidence that the individual made the statement if a relevant official asks the individual to do so.

Subsection 11(9) states that if the individual's made statement as per section 11(6), the individual must, if a relevant official asks the individual to do so, produce evidence of receiving a course of vaccinations as per paragraph 11(6)(a) or of a medical contraindication to COVID-19 as per paragraph 11(6)(b).

Subsection 11(10) provides that the requirements in section 11 apply at the port.

Subsection 11(10) also notes:

- that an individual who fails to comply with this requirement may contravene a civil penalty provision under section 46 of the Biosecurity Act;
- that a person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents;
- that protections for children or incapable persons who are subject to the requirements in this section are provided in subdivision B of Division 2 of Part 1 of Chapter 2 of the Biosecurity Act; and
- Part 2 of Chapter 11 of the Biosecurity Act deals with confidentiality of personal information collected under the Biosecurity Act.

Section 12 provides exemptions for voyages.

Subsections 12(1) and (2) provide in exceptional circumstances, the Director of Human Biosecurity, a chief human biosecurity officer, a human biosecurity officer or a Home Affairs SES employee may, in writing:

- (a) grant an exemption for the purposes of section 11 for a relevant international voyage; or
- (b) grant an exemption for the purposes of any of paragraphs 11(2)(c) to (g) for a relevant international voyage.

Section 13 provides exemptions for classes of individuals.

Subsections 13(1) and (2) provide that the Director of Human Biosecurity, in exceptional circumstances, may grant, in writing, an exemption for the purposes of any of paragraphs 11(2)(c) to (g) to a class of individuals.

Section 14 provides exemptions for individuals.

Subsection 14(1) provides that in exceptional circumstances a relevant official may grant an exemption for the purposes of any of paragraphs 11(2)(c) to (g) to an individual.

Subsection 14(2) provides that for the purposes of subsection (1), exceptional circumstances are demonstrated by the individual providing a compelling reason for not complying with the paragraph.

Subsection 14(3) provides that an exemption under subsection (1) must be in writing.

A subheading ‘Division 2— Declarations by crew—unplanned disembarkation’ is added.

Section 15 requires providing vaccination status on request.

Subsection 15(1) states that section 15 applies to an individual if:

- they are entering Australian territory, at a port; and
- on a vessel on a relevant international voyage; and
- the individual is in charge or a member of the crew and has had no interaction with passengers on the voyage and does not intend to disembark; and
- they disembark.

Subsection 15(2) states that if a relevant official asks the individual to do so, the individual must make, and give to the relevant official, a declaration about their vaccination status as per subsection 11(6).

Subsection 15(3) provides that the requirements in section 15 apply at the port.

Subsection 15(3) also notes:

- that an individual who fails to comply with this requirement may contravene a civil penalty provision under section 46 of the Biosecurity Act;
- that a person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents;
- that protections for children or incapable persons who are subject to the requirements in this section are provided in subdivision B of Division 2 of Part 1 of Chapter 2 of the Biosecurity Act; and
- Part 2 of Chapter 11 of the Biosecurity Act deals with confidentiality of personal information collected under the Biosecurity Act.

A heading with ‘Part 4—Travel history declarations—passengers on flights and individuals on voyages’ is added.

Section 16 requires passengers to provide their travel history declaration on request.

Subsection 16(1) states that this section applies to an individual who is entering Australian territory at a landing place as per the Biosecurity Act and as a passenger of a vessel on a relevant international flight.

Subsection 16(2) provides that if a relevant official asks the individual to do so, the individual must make, and give to the relevant official, 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.

Subsection 16(3) states that this section applies to an individual who is entering Australian territory at a port and as a passenger of a vessel on a relevant international voyage.

Subsection 16(4) provides that if a relevant official asks the individual to do so, the individual must make, and give to the relevant official, a declaration setting out the individual's international travel history for the 14 days before the day the relevant international voyage ended.

Subsection 16(5) provides that the requirements in this section apply at the landing place or port (as applicable).

Subsection 16(5) also notes:

- that an individual who fails to comply with this requirement may contravene a civil penalty provision under section 46 of the Biosecurity Act;
- that a person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents;
- that protections for children or incapable persons who are subject to the requirements in this section are provided in subdivision B of Division 2 of Part 1 of Chapter 2 of the Biosecurity Act; and
- Part 2 of Chapter 11 of the Biosecurity Act deals with confidentiality of personal information collected under the Biosecurity Act.

ATTACHMENT

Details of the *Biosecurity (Exit Requirements) Determination 2022*

Part 1—Preliminary

Section 1 provides that the name of the instrument is the *Biosecurity (Exit Requirements) Determination 2022*.

Section 2 provides that the Overseas Exit Determination commences on 18 April 2022.

Section 3 states that the authority for making the Overseas Exit Determination is subsection 45(2) of the Biosecurity Act.

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

In the Overseas Exit Determination, an ‘accepted COVID-19’ vaccine has the same meaning as in the Entry Requirements Determination.

A reference to the ‘Act’ in the Overseas Exit Determination means the Biosecurity Act.

‘Australian Defence Force’ has the same meaning as in the *Defence Act 1903*.

The ‘Entry Requirements Determination’ means the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022*, as in force on 18 April 2022.

In the Overseas Exit Determination, ‘member’ has the same meaning as in the *Defence Act 1903*.

Reference to a ‘relevant official’ has the same meaning as in the Entry Requirements Determination.

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

Part 2—Requirements relating to the coronavirus known as COVID-19

Section 5 sets out requirements relating an individual who is leaving Australian territory on an outgoing aircraft or vessel as a passenger.

Subsection 5(1) provides that section 5 applies to an individual who is leaving Australian territory on an outgoing aircraft or vessel as a passenger.

Subsection 5(2) relates to the ability of the individual to produce evidence, if asked by a relevant official, of:

- 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 TGA and have received the last vaccination in the course of vaccinations at least 7 days before the day the relevant international flight or the voyage of the vessel is scheduled to commence; or
- they have a medical contraindication to COVID-19 vaccines confirmed by a medical practitioner.

Subsection 5(3) provides that the requirement to be able to produce evidence as per subsection 5(2) applies at the landing place or port from which the aircraft or vessel is leaving Australian territory.

Subsection 5(3) also notes:

- that an individual who fails to comply with this requirement may contravene a civil penalty provision under section 46 of the Biosecurity Act;
- that a person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information or documents;
- that protections for children or incapable persons who are subject to the requirements in this section are provided in subdivision B of Division 2 of Part 1 of Chapter 2 of the Biosecurity Act; and
- Part 2 of Chapter 11 of the Biosecurity Act deals with confidentiality of personal information collected under the Biosecurity Act.

Section 6 provides exemptions from the requirements of section 5.

Section 6 provides that exemptions from the requirements of section 5 applies to the following individuals:

- a member of the crew of the crew of an aircraft or vessel or worker associated with the safety or maintenance of an aircraft or vessel (other than the outgoing aircraft or vessel);
- an individual engaged in the in the day-to-day conduct of inbound and outbound freight;
- an individual whose travel is associated with essential work at an offshore facility;
- an individual who is travelling on official government business (including a member of the Australian Defence Force); or
- an individual who is travelling on an Australian Government facilitated flight or voyage.