

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity Legislation Amendment (2022 Measures No. 1) Determination 2022

Purpose

The *Biosecurity Legislation Amendment (2022 Measures No. 1) Determination 2022* (Amendment Determination) amends the *Biosecurity (Entry Requirements) Determination 2016* (2016 Determination) and repeals the following two instruments:

- The *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022* (Entry Requirements Determination); and
- The *Biosecurity (Exit Requirements) Determination 2022* (Exit Requirements Determination).

Amendment of the 2016 Determination

The *Biosecurity Act 2015* (Biosecurity Act) provides the primary legislative means and a regulatory framework for the Australian Government to manage the risk of pests and diseases from entering Australian territory and causing harm to animal, plant and human health, the environment and the economy. The Biosecurity Act manages biosecurity risks, including the risk of listed human diseases, entering Australian territory, or emerging, establishing themselves, or spreading in Australian territory or a part of Australian territory.

The 2016 Determination currently provides that a person who has stayed overnight or longer in a yellow fever risk country or area (as set out in Schedule 1 to the 2016 Determination) within 6 days of entering Australia may be asked by a biosecurity officer to show an international vaccination certificate in respect of the listed human disease yellow fever (see section 4 of the *Biosecurity (Listed Human Diseases) Determination 2016*). The 2016 Determination also provides a general requirement that an individual may be screened by a biosecurity officer or human biosecurity officer for the purpose of establishing whether the individual may be, or may have been, infected with a listed human disease.

The Amendment Determination will amend the 2016 Determination to make clear that, in order to determine whether the requirement to show an international vaccination certificate for yellow fever will apply, a person may be required to declare their travel history for the 6 days before entering Australia. This will be achieved through a two-step screening process. Firstly, a person will be required to declare whether they have been in a broad region (Africa, the Caribbean, Central America or South America), then if so, they will be required to declare whether they had stayed overnight or longer in a yellow fever risk country or area at any time in that 6-day period before entering Australia. This will support current practices in identifying people who have entered Australia after being in a yellow fever risk country or area at any time in the 6 days before entering Australia.

The 2016 Determination will also be amended to include a provision to allow a relevant official, if they reasonably suspect that a person has, or has been exposed to, a listed human disease, to request that a person make a declaration stating their international travel history for the 14 days prior to entering Australia. This is for the purpose of preventing a listed human disease, including those that may be emerging, from entering, or establishing itself or spreading in, Australian territory. This provision is intended to be relied on in circumstances where, for example, there is a new variant or kind of a listed human disease spreading in another country or where there is a concerning increase in cases of an existing listed human disease.

Repeal of the Entry Requirements Determination and Exit Requirements Determination

The Entry Requirements Determination and Exit Requirements Determination were made by the then Health Minister under the Biosecurity Act as part of a measured and proportionate response to the COVID-19 pandemic.

The Entry Requirements Determination sets out entry requirements, subject to relevant exemptions, for passengers on incoming international flights and on relevant international voyages. Individuals were required to produce evidence of a statement that they made before boarding, which includes, among other matters, information about the person, a declaration as to their COVID-19 vaccination status and understanding of state and territory quarantine and testing requirements. The entry requirements also required people on relevant international aircraft or international voyages to declare their international travel history in the 14 days prior to the commencement of the flight or the end of voyage (as the case may be), if requested to do so by a relevant official. The entry requirement supported the contact tracing of incoming international passengers for COVID-19.

The Exit Requirements Determination requires passengers on outgoing aircraft or vessel to produce evidence regarding their COVID-19 vaccination status or medical evidence of a contraindication to COVID-19 vaccines, if asked by a relevant official to do so.

Repeal of these two instruments will remove the entry and exit requirements for international travellers, as broadly described above, that were put in place to assist with Australia's response to the COVID-19 pandemic. However, operators of international aircraft and vessels may choose to implement their own health and safety requirements, for example, as part of the terms and conditions of carriage on their services.

The Health Minister, on advice from the Chief Medical Officer (CMO), has decided that the two related instruments as legal measures imposed on all travellers are no longer proportional to the risks of preventing entry into or spread of COVID-19 in Australia or to another country.

The repeal of these two instruments is in line with the next stage of Australia's public health response to the COVID-19 pandemic, the easing of COVID-19 requirements internationally, high domestic and global vaccination rates and public health advice.

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 Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). The Amendment Determination is automatically repealed after its commencement under section 48A of the 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.

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.

The Health Minister, on advice from the CMO, is satisfied that the repeal of the Entry Requirements Determination is appropriate or proportionate due to the high vaccination rates and natural immunity from infection in Australia, and consistent with the reduction of public health and social measures such as contact tracing efforts for COVID-19, for which this information was collected.

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 aircraft 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.

The Health Minister, on advice from the CMO, is satisfied that the repeal of the Exit Requirements Determination is appropriate or proportionate due to global case numbers of COVID-19 continuing to be high and more than 95% of Australians over the age of 16 having received at least two doses of a COVID-19 vaccine.

Background

Yellow fever

Australia is a signatory to the World Health Organization (WHO) *International Health Regulations 2005* (IHR). Annex 1B of the IHR requires Member States to have the capacity to apply entry and exit requirements for arriving and departing travellers in response to public health risks and emergencies of international concern.

The IHR at Annex 7 provides proof of vaccination or prophylaxis against yellow fever may be required for travellers as a condition of entry to a State Party. Consistent with the IHR, the Entry Determination provides that individuals entering Australia who have been in a yellow fever risk country in the 6 days prior to entry may be required to carry and show a certificate of vaccination against yellow fever. Yellow fever is a listed human disease under the Biosecurity Act (see section 4 of the *Biosecurity (Listed Human Diseases) Determination 2016*).

The 2016 Determination also specifies yellow fever risk countries. This list of countries is based on information provided by the WHO and is regularly reviewed.

COVID-19

On 5 January 2020, the WHO notified Member States under the 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.

Australia is one of the most vaccinated countries against COVID-19 in the world. Over 95% of people over the age of 16 in Australia have had 2 doses of an approved COVID-19 vaccine.

Australia's high rate of vaccination against COVID-19, along with easing COVID-19 restrictions domestically, supports public health advice that it is appropriate or proportionate with Australia's approach to the next phase of the COVID-19 pandemic to repeal the measures in the Entry Requirements Determination and the Exit Requirements Determination.

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 Amendment Determination will commence immediately after the registration of the instrument. The Entry Requirements Determination and the Exit Requirements Determination end on 6 July 2022.

Consultation

The Department of Home Affairs and the Department of Agriculture Fisheries and Forestry were consulted in the making of the Amendment Determination.

Details of the *Biosecurity Legislation Amendment (2022 Measures No. 1)*
Determination 2022

Part 1—Preliminary

Section 1 provides that the name of the Amendment Determination is the *Biosecurity Legislation Amendment (2022 Measures No. 1) Determination 2022*.

Section 2 provides Parts 1 to 3 of the Amendment Determination commence immediately after registration of the instrument. Schedules 1 and 2 of the Amendment Determination commence on 6 July 2022.

Section 3 states that the authority for making the Amendment Determination is subsections 44(2) and 45(2) 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.

Part 2—Application of instruments

Section 5 provides that the repeal of the Entry Requirements Determination does not apply to passengers on flights and voyages that are scheduled to arrive at their Australian destination on or after 6 July 2022. This means that individuals on relevant international flights or voyages that are scheduled to arrive at their Australian destination on or after 6 July 2022 will not be required to complete a statement or provide their travel history as required by the Entry Requirements Determination.

Section 6 applies the Entry Requirements Determination to flights or voyages that are scheduled to arrive at their Australian destination before 6 July 2022.

Part 3—Repeal of this instrument

Section 7 provides for the repeal of the Amendment Determination at the start of 7 July 2022.

Schedule 1 – Amendments

Biosecurity (Entry Requirements) Determination 2016

Item 1 amends section 4, which sets out the definitions for the 2016 Determination, to insert new definitions of ‘Home Affairs Department’ and ‘relevant official’. The ‘Home Affairs Department’ means the Department administered by the Minister administering the *Australian Border Force Act 2015*.

A ‘relevant official’ means a biosecurity officer, a chief human biosecurity officer, a human biosecurity officer, an APS employee in the Agriculture Department or an APS employee in the Home Affairs Department. The concepts of a biosecurity

officer, a chief human biosecurity officer and a human biosecurity officer are defined in the Biosecurity Act (at sections 545, 562 and 563 respectively). An APS employee is defined in the *Public Service Act 1999*.

Item 2 inserts new section 4A and 4B in Part 2, before section 5 of the 2016 Determination.

Section 4A

New section 4A applies to an individual who is entering Australian territory at a landing place or port in accordance with Division 2 or 3 of Part 4 of Chapter 4 of the Biosecurity Act.

New section 4A requires that the individual must, in writing, declare to a relevant official whether the person had been in Africa, South America, Central America or the Caribbean at any time in the 6 days before entering the landing place or port. This requirement applies at the landing place or port as applicable.

Note 1 to this section 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 section 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 section 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 section provides that Part 2 of Chapter 11 of the Biosecurity Act deals with the confidentiality of personal information collected under the Biosecurity Act.

New section 4A is intended to operate to initially screen all incoming travellers to determine whether they've been to the continents or geographical areas in which the yellow fever risk countries or areas are located. This will determine a cohort of persons who will then need to declare under section 4B whether they have been in a yellow fever risk country or area as a result of declaring they've been in the broader areas of Africa, South America, Central America or the Caribbean. At present, all the yellow fever risk countries or areas in Schedule 1 to the 2016 Determination are located in these continents or geographical areas.

New section 4A may also mean, in practice, that those who know that they have been to Africa, South America, Central America or the Caribbean, but are unsure whether they have specifically been in a yellow fever risk country or area for the purposes of section 4B, may be assisted by a relevant official in determining whether section 4B applies to them by a relevant official. Therefore, section 4A, in operation with section 4B, may mean that those who have been to a yellow fever risk country or area may be more accurately identified.

Section 4B

New section 4B applies to an individual who is entering Australian territory at a landing place or port in accordance with Division 2 or 3 of Part 4 of Chapter 4 of the Biosecurity Act and had been in Africa, South America, Central America or the Caribbean at any time in the 6 days before entering the landing place or port.

New section 4B requires that the individual must declare to a relevant official whether they had stayed overnight or longer in a yellow fever risk country or area at any time in the 6 days before entering the landing place or port. If the individual makes such a declaration orally, they must also make the declaration in writing if a relevant official asks the individual to do so. This requirement applies at the landing place or port as applicable. The notes to new section 4A are replicated in this section.

New section 4B is intended to support the operation of section 5 of the 2016 Determination. Section 5 of the 2016 Determination requires a person to carry and show an international vaccination certificate for yellow fever to a biosecurity officer if they had stayed overnight or longer in a yellow fever risk country or area within 6 days of entering Australia. New sections 4A and 4B operate together to enable a relevant official to identify those persons who are subject to section 5, as those persons will be required to declare whether they had stayed overnight or longer in a yellow fever risk country or area in the 6 days before entering Australia.

Item 3 repeals the heading to section 5 of the 2016 Determination and substitutes the heading ‘5 Vaccination certificates and travel history—individuals who have stayed in yellow fever risk countries or areas’ to better describe the content of section 5.

Item 4 amends paragraph 5(1)(b) of the 2016 Determination to omit the words ‘within 6 days of’ and substitute the words ‘at any time in the 6 days before’. This amendment is intended to provide clearer wording regarding the relevant period in which section 5 will apply.

Item 5 inserts a subheading before subsection 5(2), ‘International vaccination certificates’ to describe the subject of subsections 5(2) and 5(3).

Item 6 amends subsection 5(2) to omit the words ‘biosecurity officer’ wherever occurring in the subsection and substitute the words ‘relevant official’. This reflects current practice at entry points into Australia where a person may be met by a biosecurity officer or an APS employee of the Agriculture Department or Home Affairs Department.

Item 7 amends paragraph 5(2)(b) to omit the words ‘the officer’ substitute the words ‘relevant official’ to be consistent with other amendments to the 2016 Determination.

Item 8 repeals the note to subsection 5(2). This is because the notes have been updated and placed at the end of new subsection 5(6) as described in Item 9 below.

Item 9 adds new subsections 5(4), 5(5) and 5(6) at the end of section 5. These new subsections provide that an individual must declare to a relevant official the

individual's international travel history for the 6 days before entering the landing place or port. If the individual makes this declaration orally, the individual must also make the declaration in writing if a relevant official asks the individual to do so. The requirements in this section apply at the landing place or port as applicable. The notes to new subsection 5(6) are the same as those at the end of new section 4A as described in Item 2 above.

Items 10 and 11 amend paragraph 6(1)(b) and subsection 6(2) respectively to omit the words 'biosecurity officer or a human biosecurity officer' and substitute the words 'relevant official'. This ensures consistency with the other amendments to the 2016 Determination.

Item 12 inserts a new subsection 6(3) after subsection 6(2) (but before the note) of the 2016 Determination. New subsection 6(3) provides that the requirements in section 6 apply at the landing place or port as applicable. This has been added to ensure that section 6 complies with subsection 44(4) of the Biosecurity Act, which requires that any determination made under section 44 must specify where the requirements apply.

Item 13 repeals the note to section 6 and inserts new notes. The new notes to section 6 are the same as those at the end of new section 4A as described in Item 2 above.

Item 14 inserts a new Part 4 after Part 3 of the 2016 Determination. New Part 4 relates to general travel history declarations.

New section 7 outlines requirements for providing a travel history declaration on request. Section 7 will apply to an individual who is entering Australian territory on an aircraft at a landing place in accordance with Division 2 of Part 4 of Chapter 4 of the Act if the flight commenced outside Australian territory. If a relevant official reasonably suspects that the individual has, or has been exposed to, a listed human disease and a relevant official asks the individual to do so, the individual must declare to a relevant official the individual's international travel history for the 14 days before the day the flight commenced.

Section 7 will also apply to an individual who is entering Australian territory on a vessel at a port in accordance with Division 3 of Part 4 of Chapter 4 of the Act if the voyage commenced outside Australian territory. If a relevant official reasonably suspects that the individual has, or has been exposed to, a listed human disease and a relevant official asks the individual to do so, the individual must declare to a relevant official the individual's international travel history for the 14 days before the day the voyage ended.

If an individual makes a declaration as required above orally, the individual must also make the declaration in writing if a relevant official asks the individual to do so.

The requirements of section 7 apply at the landing place or port as applicable. The notes to section 7 are the same as those at the end of new section 4A as described in Item 2 above.

Section 7 is likely to be used where changes in circumstances relating to listed human diseases are causing human health concerns such that those listed human diseases are to be prevented from entering, establishing or spreading in, Australian territory. Section 7 is intended to be relied on in circumstances where, for example, there is a new variant or kind of a listed human disease spreading in another country or where there is a concerning increase in cases of an existing listed human disease.

Schedule 2 – Repeals

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

Item 1 repeals the whole of the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022*. Repealing the Entry Requirements Determination will mean that individuals arriving in Australia on international flights or voyages are no longer required to have completed a written statement that declares, among other matters, their COVID-19 vaccination status.

Biosecurity (Exit Requirements) Determination 2022

Item 2 repeals the whole of the *Biosecurity (Exit Requirements) Determination 2022*. Repealing the Exit Requirements Determination will mean that individuals leaving Australian territory as passengers are not required to provide evidence of their COVID-19 vaccination status if asked by a relevant official.