



Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2023

I, Mark Butler, Minister for Health and Aged Care, make the following determination.

Dated 2 January 2023

Mark Butler
Minister for Health and Aged Care

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Part 1—Preliminary

1 Name

This instrument is the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2023*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	5 January 2023.	5 January 2023

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under subsection 44(2) of the *Biosecurity Act 2015*.

4 Definitions

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

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

In this instrument:

Act means the *Biosecurity Act 2015*.

COVID-19 means the coronavirus known as COVID-19.

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

Home Affairs SES employee means an SES employee in the Home Affairs Department.

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NAAT test means a test that uses nucleic acid amplification technology as the testing method.

Note: For example, each of the following is a test that uses nucleic acid amplification technology as the testing method:

- (a) polymerase chain reaction test;
- (b) transcription mediated amplification test;
- (c) loop-mediated isothermal amplification test.

relevant official means any of the following:

- (a) a biosecurity officer;
- (b) a chief human biosecurity officer;
- (c) a human biosecurity officer;
- (d) an APS employee in the Agriculture Department;
- (e) an APS employee in the Home Affairs Department.

Part 2—Negative test requirements—passengers

5 Evidence of negative test results

- (1) This section applies if:
 - (a) an individual is entering Australian territory at a landing place in accordance with Division 2 of Part 4 of Chapter 4 of the Act; and
 - (b) the individual is entering as a passenger of an aircraft on a flight that commenced outside Australian territory; and
 - (c) the flight is a direct or indirect flight that:
 - (i) commences in the People’s Republic of China or the Special Administrative Region of Hong Kong or Macau; and
 - (ii) ends in Australian territory.
- (2) However, this section does not apply if:
 - (a) an exemption set out in section 8 applies to the individual; or
 - (b) an exemption was granted to the individual under section 9 before the flight arrives in Australian territory; or
 - (c) an exemption granted under section 10 before the flight arrives in Australian territory applies to the individual; or
 - (d) an exemption was granted under section 11 for the flight before the flight arrives in Australian territory; or
 - (e) the flight is an Australian Government facilitated flight.

Ability to produce evidence of negative test result

- (3) The individual must be able to produce to a relevant official evidence, in the form specified in subsection (4), that in the period mentioned in subsection (6):
 - (a) the individual was tested for COVID-19 using:
 - (i) a test specified in subsection (5); or
 - (ii) a rapid antigen test conducted in accordance with subsection (7); and
 - (b) the result of the test was negative.
- (4) The evidence must be in the form of:
 - (a) for subparagraph (3)(a)(i)—the results of the test specified in subsection (5); or
 - (b) for subparagraph (3)(a)(ii)—a certificate provided by a medical practitioner that includes the matters specified in subsection (8).

NAAT and other approved tests

- (5) For the purposes of subparagraph (3)(a)(i), the following tests are specified:
 - (a) a NAAT test;
 - (b) a test approved under section 6 for a country or region, if:
 - (i) the individual was in the country or region in the period mentioned in subsection (6); and

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- (ii) the approval was in force at the beginning of that period.
- (6) For the purposes of subsection (3) and subparagraph (5)(b)(i), the period is:
 - (a) for an individual to whom an extension does not apply under section 7—the period of 48 hours before the day the individual is scheduled to depart from the People’s Republic of China or the Special Administrative Region of Hong Kong or Macau; or
 - (b) for an individual to whom an extension applies under section 7—the period specified in the extension.

Rapid antigen tests

- (7) For the purposes of subparagraph (3)(a)(ii), 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.
- (8) For the purposes of paragraph (4)(b), the following matters are specified for a certificate for a rapid antigen test:
 - (a) the date and time of the test;
 - (b) the name of the individual tested;
 - (c) the type of test conducted;
 - (d) the brand and make of the test;
 - (e) that the specimen for the test was collected, and the test was carried out, by or under the supervision of a medical practitioner;
 - (f) the result of the test;
 - (g) the signature of the medical practitioner providing the certificate.

Where requirements apply

- (9) The requirements in this section apply at the landing place.

- Note 1: 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 Act).
- Note 2: 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 Act).
- Note 3: For protections for children or incapable persons who are subject to the requirement in subsection (3), see Subdivision B of Division 2 of Part 1 of Chapter 2 of the Act.
- Note 4: Part 2 of Chapter 11 of the Act deals with confidentiality of personal information collected under the Act.

6 Approval of tests other than NAAT tests for countries or regions

- (1) For the purposes of paragraph 5(5)(b), the Director of Human Biosecurity may approve a kind of test for COVID-19 for a country or region (including the People’s Republic of China or the Special Administrative Region of Hong Kong or Macau) if a NAAT test is not reasonably available in the country or region.
- (2) An approval under subsection (1) must be in writing.

7 Extension of period for testing for classes of individuals

- (1) For the purposes of paragraph 5(6)(b), the Director of Human Biosecurity may extend the period for being tested 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 48 hours.
- (2) An extension under subsection (1) must be in writing.

8 Exemptions for individuals—general

- (1) An exemption for the purposes of section 5 applies to the following:
 - (a) an individual who was less than 12 years old on the day the individual was scheduled to depart from the People’s Republic of China or the Special Administrative Region of Hong Kong or Macau;
 - (b) an individual who is carrying evidence, provided by a medical practitioner within 30 days before the day the individual was scheduled to depart from the People’s Republic of China or the Special Administrative Region of Hong Kong or Macau, that the individual has a medical condition that prevents the individual from taking a test for COVID-19;
 - (c) an individual who is carrying a certificate, provided by a medical practitioner within 30 days before the day the individual was scheduled to depart from the People’s Republic of China or the Special Administrative Region of Hong Kong or Macau, that includes the matters mentioned in subsection (2);
 - (d) an individual:
 - (i) who is a passenger of an aircraft on a flight departing from the People’s Republic of China or the Special Administrative Region of Hong Kong or Macau that is an emergency medical evacuation flight; and
 - (ii) who meets the requirement mentioned in subsection (3);
 - (e) an individual:
 - (i) who is a passenger of an aircraft on a flight departing from the People’s Republic of China or the Special Administrative Region of Hong Kong or Macau that is an emergency medical evacuation flight; and
 - (ii) who is accompanying and supporting an individual (the *patient*) mentioned in paragraph (d) because of the patient’s medical condition.

Certificate for recovered individuals

- (2) For the purposes of paragraph (1)(c), the matters are the following:
 - (a) the day the certificate is provided;
 - (b) a statement to the effect that the individual has had COVID-19 but is now recovered and is not considered to be infectious;
 - (c) the day when there was first a positive result of a NAAT test or a rapid antigen test for COVID-19 for the individual;
 - (d) a statement to the effect that, on the day the certificate is provided:

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- (i) it has been at least 7 days since the day mentioned in paragraph (c) of this subsection; and
- (ii) 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.

Emergency medical evacuation flights

- (3) For the purposes of subparagraph (1)(d)(ii), the requirement is that the individual (the *patient*) (or an individual accompanying and supporting the patient as mentioned in paragraph (1)(e)) is carrying evidence, provided by a medical practitioner, that:
 - (a) the patient has a serious medical condition; and
 - (b) the patient requires emergency management or an effective treatment of the medical condition that:
 - (i) is available in Australian territory; and
 - (ii) was not reasonably available, in time to benefit the patient, in the People’s Republic of China or the Special Administrative Region of Hong Kong or Macau where the flight commenced; and
 - (c) the lack of the management or treatment mentioned in paragraph (b) of this subsection caused an immediate exacerbation of the patient’s medical condition and the need for the patient to enter Australian territory within 48 hours.

9 Exemptions for individuals—exceptional circumstances

- (1) In exceptional circumstances, a relevant official may grant an exemption for the purposes of section 5 to an individual.
- (2) For the purposes of subsection (1), exceptional circumstances are demonstrated by the individual providing a compelling reason for not complying with the requirement in subsection 5(3).
- (3) An exemption under subsection (1) must be in writing.

10 Exemptions for classes of individuals—testing not available

- (1) The Director of Human Biosecurity may grant an exemption for the purposes of section 5 to a class of individuals if no test for COVID-19 is reasonably available to that class of individuals.
- (2) An exemption under subsection (1) must be in writing.

11 Exemptions for flights—exceptional circumstances

- (1) 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 5 for a flight.
- (2) An exemption under subsection (1) must be in writing.