

## **EXPLANATORY STATEMENT**

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

#### ***Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2021***

#### **Purpose**

The *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2021* (the Determination) sets out new entry requirements for people who are entering Australia at a landing place or port.

The Determination requires individuals who are entering Australia to produce evidence that, before they board an aircraft on a relevant international flight, the person provided a written statement that sets out the information required by the Determination. Relevantly, the statement would need to include information to the effect that the individual has been fully vaccinated with an accepted COVID-19 vaccine, or they are exempt from vaccination requirements due to a medical contraindication, or they are not vaccinated with an accepted COVID-19 vaccine. The individual would also need to be able to provide evidence of the relevant matter in their written statement. These requirements apply to individuals who are older than 12 years and three months on the day their international flight is due to commence.

These requirements set out by the Determination align with the easing of restrictions as Australia gradually reopens international borders in accordance with public health advice.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

#### **Authority**

Subsections 44(1) and 44(2) of the *Biosecurity Act 2015* (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 whether the instrument might be disallowed.

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.

## **Background**

On 5 January 2020, the World Health Organization (WHO) notified Member States under the *International Health Regulations (2005)* 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 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)’. It is closely related genetically to the virus that caused the 2003 outbreak of Severe Acute Respiratory Syndrome (SARS). The international name given by the 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.

## **Commencement**

The Determination will commence on 1 November 2021.

## **Consultation**

During the development of the Determination, the Department of Home Affairs, Department of Agriculture, Water and the Environment, Attorney-General’s Department and the Department of the Prime Minister and Cabinet were consulted.

**Details of the Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2021**

**Section 1** provides that the name of the Determination is the *Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2021*.

**Section 2** provides that the Determination commences on 1 November 2021.

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

**Section 4** sets out definitions for words and phrases in the Determination. A note to section 4 notes that a number of expressions used in the Determination are defined in the Biosecurity Act including the expressions “Agriculture Department” “Australian territory”, “Health Department”, “landing place” and “passenger”.

An ***accepted COVID-19 vaccine*** is defined to mean a COVID-19 vaccine that is registered goods within the meaning of the *Therapeutic Goods Act 1989*, or a COVID-19 vaccine that is recognised by the Therapeutic Goods Administration.

At the time the Determination was made, the Therapeutic Goods Administration had recognised the following vaccines:

- AstraZeneca Vaxzevria;
- AstraZeneca COVISHIELD;
- Pfizer/Biontech Comirnaty;
- Moderna Spikevax;
- Sinovac Coronavac; and
- Janssen-Cilag COVID Vaccine.

A reference to the ***Act*** in the Determination means the Biosecurity Act.

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

A ***relevant international flight*** is defined to mean 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 on 1 November 2021 in the place where the flight commences.

A ***relevant official*** means any 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.

The phrases “biosecurity officer”, “chief human biosecurity officer” and “human biosecurity officer” are defined in the Biosecurity Act. The phrase “APS employee” is defined in the *Public Service Act 1999*.

A reference to the *Therapeutic Goods Administration* means that part of the Department administered by the Health Secretary known as the Therapeutic Goods Administration.

**Section 5** sets out the new entry requirements relating to vaccination status.

Subsection 5(1) provides that this section applies to an individual who is entering Australian territory at a landing place as a passenger of an aircraft on a relevant international flight. Subsection 5(1) also provides that the requirements of section 5 only apply to an individual who was more than 12 years and 3 months old on the day the relevant international flight was scheduled to commence.

The requirements of section 5 will only apply to children more than 12 years and 3 months old because, at the time the Determination was made, children younger than 12 years old are not currently eligible for a COVID-19 vaccine (noting that not all countries have approved children 12 years old and over for a COVID-19 vaccine). Further, once a child has turned 12 years old and is eligible for a COVID-19 vaccine, appropriate time should be afforded to that child to access a COVID-19 vaccine. In this case, a period of 3 months after a child has turned 12 years old.

Subsection 5(2) states that the individual must be able to produce evidence to a relevant official that, before the individual boarded the aircraft, the individual made a written statement that included certain information. The written statement must include a declaration mentioned in subsection 5(3).

If a person makes the written statement in a paper form, the following information for the individual must also be included:

- Name;
- Date of birth;
- Passport number;
- Phone number while in Australian territory;
- Intended address while in Australian territory;
- Email address; and
- Flight number.

Subsection 5(3) provides that, for the purposes of paragraph 5(2)(a), the declaration is a declaration of which of the following apply to the individual:

- (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 and they received the last vaccination in the course of vaccinations at least 7 days before the day the relevant international flight was scheduled to commence. The individual will also need to provide in the written statement that they can produce evidence of these matters;
- (b) The individual has a medical contraindication to COVID-19 vaccines and can produce evidence provided by a medical practitioner of this matter;

(c) Neither of the matters set out in paragraph (a) or (b) apply.

Paragraph 5(3)(a) of the Determination refers to an individual receiving 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. This reflects that the Australian Technical Advisory Group on Immunisation (ATAGI) considers that a person is fully vaccinated if they have completed a course, including a mixed dose, of a COVID-19 vaccine that is accepted by the Therapeutic Goods Administration.

Subsection 5(4) provides that, for the purposes of providing a written statement set out in subsection 5(2), the manners in which a person may have provided a statement to a relevant official includes the use of an electronic system maintained by the Home Affairs Department.

Subsection 5(5) states that if the individual made a written statement in paper form, the individual must provide the statement to a relevant official.

Subsection 5(6) states that if the individual made a written statement electronically, the individual must produce evidence that they made the statement if a relevant official asks the individual to do so.

Subsection 5(7) provides that if a relevant official asks the individual for:

- Evidence that the individual has received a course of vaccinations with an accepted COVID 19 vaccine in accordance with a schedule for receiving that vaccine that is accepted by the Therapeutic Goods Administration and they 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 individual had provided this information in their written statement);
- Evidence by a medical practitioner that the individual has a medical contraindication to COVID-19 vaccines (if the individual had provided this information in their written statement);

then the individual must produce this evidence and provide it to the requesting relevant official.

Subsection 5(8) provides that the requirements in section 5 apply at the landing place. Subsection 5(8) has four notes to the subsection, set out below.

Note 1 provides that an individual who fails to comply with a requirement that applies to the individual under section 5 may contravene a civil penalty provision (see section 46 of the Biosecurity Act).

Note 2 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 provides that, for protections for children or incapable persons who are subject to the requirement in subsection (2), see Subdivision B of Division 2 of Part 1 of Chapter 2 of the Biosecurity Act.

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