

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Entry Requirements) Amendment (2023 Measures No. 1) Determination 2023

Purpose and operation

The *Biosecurity (Entry Requirements) Amendment (2023 Measures No. 1) Determination 2023* (the Amendment Determination) amends the *Biosecurity (Entry Requirements) Determination 2016* (the Principal Determination) to enable the inclusion of an additional area in the yellow fever risk countries list in Schedule 1 to the Principal Determination.

The purpose of the Amendment Determination is administrative in nature, making a minor amendment to Schedule 1 of the Principal Determination to align with the World Health Organization's (WHO) "[Countries with risk of yellow fever transmission and countries requiring yellow fever vaccination](#)" guidance document (WHO guidance document), published on the WHO's website on 18 November 2022. The amendment adds an area to existing listed countries rather than establishing a new country of risk; specifically, including Tobago in the listing for Trinidad.

The Principal Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. The Principal Determination was made under subsection 44(2) of the *Biosecurity Act 2015* (Cth) (the Biosecurity Act), and subsection 44(3) provides that a determination made under subsection 44(2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.

Background

The 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. Yellow fever is a listed human disease for the purposes of subsection 42(1) of the Biosecurity Act.

Australia is a signatory and Member State to the WHO *International Health Regulations 2005* (IHR). The IHR allow Member States to require arriving travellers to provide proof of vaccination against certain diseases and 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. Australia has done this by making the Principal Determination under subsection 44(2) of the Biosecurity Act.

Consistent with the IHR, the Principal Determination provides that an individual entering Australia who has been in a yellow fever risk country in the last 6 days must make a declaration as to their travel history in those 6 days and may be required to carry and show a

certificate of vaccination against yellow fever. This list of countries is based on information provided by the WHO guidance document and will continue to be regularly reviewed, as appropriate.

Authority

Subsection 44(2) of the Biosecurity Act provides that the Health Minister may determine one or more requirements for individuals who are entering Australian territory at a landing place or port. Subsections 44(4), (5) and (6) of the Biosecurity Act set out what a determination made under subsection 44(2) may specify, and subsection 44(7) sets out what a determination made under subsection 44(2) must not specify.

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

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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 commences the day after it is registered on the Federal Register of Legislation.

Consultation

The Department of Agriculture, Fisheries and Forestry was notified about the amendment, given its joint responsibility for the Biosecurity Act. Further consultation was not considered to be necessary as the amendment is minor and administrative in nature. Schedule 1 to the Principal Determination is drafted in accordance with the WHO guidance document and associated international surveillance data.

General

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

Details of this instrument are set out in **Attachment A**.

Details of the *Biosecurity (Entry Requirements) Amendment (2023 Measures No. 1) Determination 2023*

Section 1 – Name

Section 1 provides the name of the Amendment Determination is the *Biosecurity (Entry Requirements) Amendment (2023 Measures No. 1) Determination 2023*.

Section 2 – Commencement

Section 2 provides the Amendment Determination commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

Section 3 provides the Amendment Determination is made under subsection 44(2) of the *Biosecurity Act 2015*.

Section 4 – Schedules

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

Schedule 1 - Amendments

Item 1 – Section 1 of Schedule 1 (table item 40)

Item 1 replaces “Trinidad” with “Trinidad and Tobago”.

This amendment is made to align the Schedule to the *Biosecurity (Entry Requirements) Determination 2016* with the WHO guidance document.