**EXPLANATORY STATEMENT**

***Biosecurity Act 2015***

***Biosecurity (Entry Requirements) Determination 2025***

**Purpose and operation**

The *Biosecurity (Entry Requirements) Determination 2025* (the Determination) revokes and remakes the *Biosecurity (Entry Requirements) Determination 2016* (the Principal Determination) to set requirements for individuals entering Australian territory, to prevent a listed human disease from entering, or establishing itself or spreading in, Australian territory or a part of Australian territory.

The Determination is being remade to reflect the use of the Australia Travel Declaration (ATD) and SmartGate systems as part of initial and secondary yellow fever screening at landing places and ports. These processes and systems were not in place when the current determination was made in 2016.

The Determination provides that individuals entering Australia must provide information to a relevant official about whether they have been in Africa, South America, Central America or the Caribbean in the six days before entering the landing place or port. The Determination allows for individuals to provide this information through provision of a completed passenger card to an official, by showing an official the ATD pass issued by the ATD system and by entering the information into a SmartGate. Where the information is entered into a SmartGate, it also needs to be provided through provision of the passenger card or by showing the ATD pass to an official. The policy objective of the determination is to screen passengers who may be at risk of exposure to yellow fever. The questions asked of passengers upon arrival through the passenger card, ATD or SmartGate are known as the ‘yellow fever questions’.

The Determination provides that individuals who have answered ‘yes’ to the initial yellow fever screening question must provide information about whether the person has stayed overnight or longer in a yellow fever risk country or area at any time in the six days before entering the landing place or port. Yellow fever risk countries and areas are set out in the Determination. The answer must be provided by answering the relevant question when prompted by the SmartGate or declaring the information to a relevant official. If the individual provides the information using a SmartGate but on completion of the process, the SmartGate door does not open, the individual must also declare the information to a relevant official orally or in writing if asked.

The Determination provides that if the individual has stayed overnight or longer in a yellow fever risk country at any time in the 6 days before entering the landing place or port, they will be asked to provide a declaration, to a relevant official or a SmartGate, as to whether they have received a yellow fever vaccine at least 10 days before entering the landing place or port or an international vaccination certificate evidencing this.

The Determination provides that a relevant official may require the individual to declare to the official the individual’s travel history for the six days before entering the landing place or port, orally or in writing, if a relevant official asks the individual to do so.

The Determination also provides new definitions of the expressions ATD, ATD pass, authorised system, Home Affairs Minister, passenger card and SmartGate.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003.* The 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 Actprovides 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 State Party to the *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 implements entry restrictions in respect of yellow fever by means of the Determination made under subsection 44(2) of the Biosecurity Act.

**Authority**

Subsection 44(2) of the Biosecurity Actprovides that the Health Minister may determine one or more requirements in respect of a listed human disease 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**

This instrument commences the day after it is registered on the Federal Register of Legislation.

**Consultation**
The Department of Health, Disability and Ageing has consulted with the Department of Home Affairs on the Determination. Both departments consulted with the Australian Government Solicitor (AGS) and jointly instructed AGS on the drafting of the Determination. Australian Border Force were consulted on the operational impacts of the amendments. The Department of Agriculture, Fisheries and Forestry (DAFF) was notified of the Determination, given its joint responsibility for the Biosecurity Act. As the amendments do not directly impact DAFF processes, by agreement with DAFF further consultation was not required.

**General**

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

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

**ATTACHMENT A**

**Details of the *Biosecurity (Entry Requirements) Determination 2025***

**Part 1—Preliminary**

**Section 1 – Name**

Section 1 provides the name of the Determination is the *Biosecurity (Entry Requirements) Determination 2025*.

**Section 2 – Commencement**

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

**Section 3 – Authority**

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

**Section 4 – Definitions**

Section 4 provides definitions of expressions used in the Determination.

**Section 5 – Schedules**

Section 5 provides that each instrument that is specified in Schedule 2 to the 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.

**Part 2—Requirements relating to yellow fever**

**Section 6 – Initial screening—information relating to travel in yellow fever risk regions**

Section 6 provides the information required relating to travel in yellow fever risk regions at the initial screening. It 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. The individual entering must provide information to a relevant official, about 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 is done by:

* providing the official with a passenger card on which the Yellow Fever question has been completed; or
* showing the official the individual’s ATD pass.

If the individual uses a SmartGate, the individual must also provide information about whether they 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, by answering the relevant question about the matter when prompted by the SmartGate.

The requirements in this section apply at the landing place or port.

**Section 7 – Secondary screening—information relating to stays in yellow fever risk countries or areas**

Section 7 provides the information required relating to stays in yellow fever risk countries or areas at the secondary screening. The secondary screening 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 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.

The individual must provide information about whether the person 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, by:

* if the individual uses a SmartGate, answering the relevant question about the matter when prompted by the SmartGate; or
* otherwise, declaring the information to a relevant official.

If the individual is using a SmartGate and the door does not open, the individual must also declare the information to a relevant official.

The requirements in this section apply at the landing place or port.

**Section 8 – Vaccination certificates and travel history—individuals who have stayed in yellow fever risk countries or areas**

Section 8 provides that the section 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 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.

A relevant official may require the individual to provide one or more of the following:

* a declaration as to whether the individual has received yellow fever vaccine at least 10 days before entering the landing place or port; or
* if the individual has entered via a SmartGate, a ticket generated by the SmartGate, indicating that the individual has, using the SmartGate, declared that the person has received yellow fever vaccine at least 10 days before entering the landing place or port; or
* an international vaccination certificate evidencing that the individual has received yellow fever vaccine at least 10 days before entering the landing place or port.

The section sets out the information an international vaccination certificate must contain.

A relevant official may require the individual to declare to the official the individual’s international travel history for the 6 days before entering the landing place or port and if the declaration is made 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.

**Part 3—Screening**

**Section 9 – Individuals who may be, or may have been, infected with listed human**

**disease**

Section 9 provides the requirement for individuals who may be, or may have been, infected with listed human disease. It applies to an individual who is entering Australian territory on a conveyance or vessel at a landing place or port in accordance with Division 2 or 3 of Part 4 of Chapter 4 of the Biosecurity Act if:

* the individual has been identified in the report given by the operator of the conveyance or vessel under subsection 193(1) of the Biosecurity Act, or in information given to a biosecurity officer under subsection 194(1) of the Biosecurity Act, as having signs or symptoms of an illness or infection; or
* the individual has been identified by a relevant official at the landing place or port as having signs or symptoms of an illness or infection; or
* the National Focal Point has been notified under the International Health Regulations that the individual has, or has been exposed to, a listed human disease; or
* before travelling to Australian territory, the individual had been in a country where individuals are known to be, or to have been, infected with a listed human disease.

A relevant official may require the individual to be screened (including by equipment or by being required to answer questions or provide information in writing) for the purpose of establishing whether the individual may be, or may have been, infected with a listed human disease.

The requirements in this section apply at the landing place or port.

**Part 4—Travel history declarations**

**Section 10 – Providing travel history declaration on request**

Section 10 provides the requirements for a travel history declaration if requested by a relevant official.

This section provides that if a relevant official reasonably suspects that the individual on an international flight (as identified by the section) 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.

This section provides that if a relevant official reasonably suspects that the individual on an international voyage (as identified by the section) 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 the individual makes a 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).

**Schedule 1 – Yellow fever risk countries and areas**

Schedule 1 outlines countries and areas where there is a risk of contracting yellow fever.

**Schedule 2 – Repeals**

Schedule 2 repeals the whole of the *Biosecurity (Entry Requirements) Determination 2016*.