

REPLACEMENT EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020

Subsection 477(1) of the *Biosecurity Act 2015* (the Act) provides that during a human biosecurity emergency period the Minister for Health (Health Minister) may determine any requirement that he or she is satisfied is necessary:

- to prevent or control the entry, emergence, establishment or spread of a listed human disease in Australian territory or part of Australian territory; or
- to prevent or control the spread of the listed human disease to another country; or
- to give effect to a recommendation made to the Health Minister by the World Health Organization (WHO) under Part III of the International Health Regulations.

On 18 March 2020, the Governor-General declared that a human biosecurity emergency exists regarding the listed human disease ‘human coronavirus with pandemic potential’ (COVID-19) (section 475 of the Act, *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*). The human biosecurity emergency period is in force for 3 months. It ceases on 17 June 2020, unless extended by the Governor-General.

During a human biosecurity emergency period, the Health Minister may, in accordance with sections 477 and 478 of the Act, determine emergency requirements, or give directions, that he or she is satisfied are necessary to prevent or control the entry, emergence, establishment or spread of the declaration listed human disease COVID-19 in Australian territory or a part of Australian territory.

The purpose of this instrument is to determine requirements (the remote communities requirements) to prevent or control the entry or spread of COVID-19 in parts of Australian territory, that is, designated areas. The designated areas covered by this determination are described in Schedule 1, and are located in Queensland, Western Australia, South Australia and the Northern Territory. The designated areas are largely identified as being local government areas, or other areas of land whose boundaries are defined by or under state or territory legislation.

The requirements prevent a person from entering a designated area unless:

- the person is entering the area to escape an immediate threat to the person’s life; or
- the person is a member of the Australian Defence Force and is entering the area in the course of the member’s duty; or
- all of the following apply to the person entering the area:
 - immediately before the entry, the person does not have any of the signs or symptoms of COVID-19;
 - in the 14 days immediately before entering, the person has not been exposed, without adequate personal protective precautions, to COVID-19;
 - in the 14 days immediately before entering, the person has not been outside Australian territory;
 - the person is not entering the area wholly or partly for the purpose of engaging in an activity in the area that is prohibited by or under an Australian law;

- the person's entry to the area is not prohibited by or under an Australian law (other than section 5 of the determination);
- at least one of subsections 5(2), (3), (4), (5), (6) and (7) of the determination applies to the person.

Subsections 5(2) – (7) permit entry by any person:

- who has undertaken 14 days of self-isolation immediately before entering the area and has not had any signs or symptoms of COVID-19 – subsection 5(2);
- who is engaging in (or in charge of, or a member of the crew of, a conveyance transporting persons engaging in) an 'essential activity' – subsection 5(3);
- who has permission to enter the area granted by a 'relevant decision-maker' for the area (these are identified for each area in Schedule 2 of the determination), who either (a) is a chief human biosecurity officer or human biosecurity officer or (b) has regard to guidance from a human biosecurity officer – subsection 5(4);
- is in transit through the area (taking the most direct route and not stopping in any place where there is, or is likely to be, anyone else) – subsection 5(5);
- is crossing land or water between designated areas or parts of a designated area – subsection 5(6);
- crossing a state border between designated areas – subsection 5(7).

Notwithstanding the exemptions above, the determination requires that any person entering a designated area must comply with all of the criteria set out in subsection 5(1)(c) of the determination, including that immediately before entering a designated area, the person does not have any of the signs or symptoms of COVID-19; in the 14 days immediately before entering the designated area the person has not been exposed (without adequate personal protective precautions) to COVID-19 and has not been outside Australian territory; the person is not entering the designated area to engage in an activity prohibited by an Australian law; and the person's entry into a designated area is not prohibited by an Australian law.

The determination includes a definition of 'essential activity' for subsection 5(3) such that a person undertaking any of the following activities may enter a designated area in reliance on that provision:

- providing health care, education, domestic violence prevention/recovery services, child protection services, policing, emergency services, local government services (such as rubbish collection), services provided by Centrelink, correctional services, funerary services;
- conducting, or taking part in, a sitting of a court or tribunal in the area;
- operating, maintaining or repairing equipment for providing electricity, gas, water, medical services, telecommunications services, or other essential infrastructure in the area. 'Operating' and 'maintaining' is intended to include delivering, constructing, building and installing telecommunications services. For example, the delivery of internet equipment to customers and the continuation of necessary construction of a network. 'Telecommunications services' is intended to include an internet or data centre;
- delivering food, fuel, mail or medical supplies in the area;
- obtaining medical care or medical supplies in the area;
- continuing the construction in the area of housing or transport infrastructure that was in progress immediately before the commencement of this instrument;
- carrying out mining operations, or ancillary operations, in the area in a manner that is agreed with a human biosecurity officer so as to minimise the extent to which other persons in the area are exposed to the persons carrying out those operations. 'Mining

operations' is intended to include exploration activities only to the extent that they are connected with or incidental to existing mining operations;

- transporting freight to or from a place in the area.

To assist in the further prevention or control of the entry or spread of COVID-19 in designated areas, a person entering a designated area in reliance on an exception under paragraphs 5(1)(a) and (b), and subsections 5(3), (4) and (6) of the determination, must take reasonable steps (having regard to the person's circumstances and reason for entering the area) to minimise their contact with other people in the area.

The Director of Human Biosecurity (who is also the Commonwealth Chief Medical Officer) and the Chief Executive Officer of the National Indigenous Australians Agency, have advised the Health Minister, and the Health Minister is satisfied, that the remote communities requirements are necessary to prevent or control the entry, emergence, establishment or spread of COVID-19 in parts of Australian territory.

The Director of Human Biosecurity has advised the Health Minister, and the Health Minister is satisfied, that each requirement:

- is likely to be effective in, or contribute to, achieving its purpose;
- is appropriate and adapted to its purpose;
- is no more restrictive or intrusive than required in the circumstances, including the manner in which the requirement is to be applied.

The Director of Human Biosecurity has advised the Health Minister, and the Health Minister is satisfied, that it is necessary for the requirements to remain in force once they commence for the duration of the human biosecurity emergency period.

To ensure that the remote communities requirements are in place to prevent or control the entry or spread of COVID-19 in designated areas, the determination commences at 11:59pm by legal time in the Australian Capital Territory on the day it is registered, and it will remain in force for the duration of the human biosecurity emergency period.

Background

On 5 January 2020, the WHO notified Member States under the *International Health Regulations (2005)* (IHR) of an outbreak of pneumonia of unknown cause in Wuhan city, China. The pathogen is a novel (new) coronavirus. On 21 January 2020, 'human coronavirus with pandemic potential' became a 'listed human disease' by legislative instrument made by the Director of Human Biosecurity under section 42 of the Act. 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 '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.

COVID-19 has entered Australia. It represents a severe and immediate threat to human health in Australia as it has the ability to cause high levels of morbidity and mortality and to disrupt the Australian community socially and economically.

Emergency requirements

The requirements that the Health Minister may determine under section 477 of the Act include: requirements that apply to persons, goods or conveyances when entering or leaving specified places; requirements that restrict or prevent the movement of persons, goods or conveyances in or between specified places; and requirements for specified places to be evacuated (s 477(3)).

Requirements determined under subsection 477(1) of the Act apply despite any provision of any other Australian law (s 477(5)). Biosecurity measures under a human biosecurity control order may continue to be imposed on an individual basis (s 477(6)).

The Australian Government has established protocols for the exercise of emergency powers under the Act to ensure that these powers are only used where necessary to protect the health of Australians, based on expert advice and following appropriate consultation.

A person who fails to comply with a requirement determined under section 477 of the Act may commit a criminal offence (punishable by imprisonment for a maximum of 5 years, or 300 penalty units (\$63,000), or both) (s 479(3)).

For an offence against subsection 479(3) of the Act to have been committed, it will be necessary to show, among other things, that the person was reckless as to whether their conduct contravened a requirement determined under section 477 of the Act (*Criminal Code Act 1995*, Schedule 1, s 5.6). Establishing recklessness requires the prosecution to establish that the person was aware of a substantial risk that a requirement applied to them and that their conduct will contravene the requirement, and having regard to the circumstances known to the person, it was unjustifiable to take that risk (*Criminal Code Act 1995*, Schedule 1, s 5.4(1)). Recklessness will also be established if a person knowingly or intentionally contravenes a requirement (*Criminal Code Act 1995*, Schedule 1, s 5.4(4)).

For example, recklessness will be unlikely to be established in relation to the provision in the determination for a person entering a designated area to not have been exposed to COVID-19 without adequate personal protective precautions in the 14 days immediately before entering the designated area (subparagraph 5(1)(c)(ii)), if the person did not know, and could not reasonably have known, that they had been exposed to COVID-19 during that period. Consistently with the definition of the term ‘exposed to’ in sections 9 and 17 of the Act, a person will be exposed to COVID-19 for the purposes of subparagraph 5(1)(c)(ii) of the determination if, for example, the person has been in physical contact with, or in close proximity to, a person infected or suspected to be infected with COVID-19.

Consultation

The remote communities requirements are supported by advice from the Director of Human Biosecurity and the Chief Executive Officer of the National Indigenous Australians Agency.

Consultation also occurred, through the National Indigenous Australians Agency, with the relevant states and territories and Land Councils.

The determination is a non-disallowable legislative instrument under the *Legislation Act 2003* (the Act, subsection 477(2)). The Act provides for the determination to be non-disallowable

to ensure that the Commonwealth is able to take the urgent action necessary to manage a nationally significant threat or harm to Australia's human health.

A provision by provision description of the determination is contained in the Attachment.

ATTACHMENT

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020

1 Name

Section 1 provides for the determination to be referred to as the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020*.

2 Commencement

Section 2 provides that the determination commences at 11:59pm by legal time in the Australian Capital Territory on the day it is registered.

3 Authority

Section 3 provides that the determination is made under subsection 477(1) of the *Biosecurity Act 2015*.

4 Definitions

Section 4 provides that a number of expressions used in the determination are defined in the Act, including Australian law, Australian territory, conveyance, exposed to and Health Department.

Section 4 also defines new expressions relevant to the determination, which are:

- designated area;
- essential activity;
- mining operations;
- NT Land Rights Act; and
- relevant decision-maker.

Part 2 - Requirements

5 Persons not to enter designated areas

Section 5 provides that a person must remain outside a designated area unless:

- (a) the person is entering the area to escape an immediate threat to the person's life; or
- (b) the person is a member of the Australian Defence Force and is entering the area in the course of the member's duty;
- (c) all of the following apply to the person entering the area:
 - (i) immediately before the entry, the person does not have any of the signs or symptoms of human coronavirus with pandemic potential;
 - (ii) in the 14 days immediately before the entry, the person has not been exposed, without adequate personal protective precautions, to human coronavirus with pandemic potential;
 - (iii) in the 14 days immediately before the entry, the person has not been outside Australian territory;
 - (iv) the person is not entering the area wholly or partly for the purpose of engaging in an activity in the area that is prohibited by or under an Australian law;
 - (v) the person's entry to the area is not prohibited by or under an Australian law (other than this section);
 - (vi) at least one of subsections (2), (3), (4), (5), (6) and (7) applies to the person.

Person is at low risk of transmitting human coronavirus with pandemic potential

Subsection 5(2) provides it applies to a person entering a designated area if, throughout 14 days before entering, the person:

- (a) has been isolated from the general public; and
- (b) has not had signs or symptoms of human coronavirus with pandemic potential;
- (c) has not been exposed to:
 - (i) human coronavirus with pandemic potential; or
 - (ii) another person with one or more signs or symptoms of human coronavirus with pandemic potential.

Person is entering area to engage in, or provide transport for, essential activity

Subsection 5(3) provides it applies to a person entering a designated area if:

- (a) the person is entering the area primarily to engage in an essential activity in the area that requires the person to be in the area; or
- (b) as the person in charge or, or a member of the crew of, a conveyance entering the area primarily to transport one or more persons described in paragraph (a).

This subsection is intended to permit a person to enter a designated area to engage in an essential activity listed in section 4 of the determination (each of which are deemed essential on medical, social or economic grounds), or to transport persons engaged in an essential activity.

Person has permission to enter area

Subsection 5(4) provides it applies to a person entering a designated area if there is in force permission for the person to enter the area given by a relevant decision-maker for the area who:

- (a) is the chief human biosecurity officer or a human biosecurity officer; or
- (b) has had regard to any guidance from a human biosecurity officer about who should be allowed to enter the area.

The reference to ‘guidance’ in paragraph (b) is intended to include both specific guidance issued by an individual human biosecurity officer, as well as general guidance issued by a human biosecurity officer that applies to all persons entering a designated area. It is not necessary for separate guidance to be obtained each time a person seeks to enter a designated area, provided that existing guidance remains in place and is applicable.

Person is in transit through area

Subsection 5(5) provides it applies to a person entering a designated area on a journey that:

- (a) is to a place beyond the area; and
- (b) is by the most direct practicable route through the area; and
- (c) does not involve stopping in the area at:
 - (i) a place where there is anyone other than the person and persons who travelled with the person; or
 - (ii) a place likely to be visited or occupied by anyone other than the person and persons who travelled with the person to the place.

This subsection is intended to permit a person to transit through a designated area on a journey to a place beyond the area in circumstances where, by reason of meeting the conditions in the subsection (e.g. travelling via the most direct practicable route, and not stopping in the area at a place where there is anyone other than people with whom the journey is being made) the person will be unlikely to cause the emergence, establishment or spread of COVID-19 in a remote community.

Person is moving without exposure between designated areas or parts of designated area

Subsection 5(6) provides it applies to a person entering a designated area (the **end area**) on a journey for which the following conditions are met:

- (a) the journey started in a designated area (the **start area**) that the person did not enter in contravention of subsection (1), whether the start area is the same as, or different from, the end area;
- (b) the journey passed through an area that was not a designated area;
- (c) on the journey the entrant was not exposed to a person who did not start the journey with the entrant;
- (d) if the journey involved use of a conveyance, the same conveyance was used for the whole journey.

This subsection is intended to permit a person to journey from one designated area to another (or from a designated area to a place outside that designated area, and then back to the designated area where the journey began) notwithstanding that the journey passes through an area that is not a designated area. Subsection 5(6) is intended to permit persons within designated areas, such as members of remote communities, to travel within or between those communities, in circumstances where that travel is unlikely to cause the emergence, establishment or spread of COVID-19.

Person is crossing State border between designated areas

Subsection 5(7) provides it applies to a person entering a designated area from an adjoining designated area by crossing the border of a State where it is part of the boundary of each of the designated areas.

6 Persons entering designated areas to minimise contact with others in those areas

Subsection 6(1) provides that it applies to a person who enters a designated area in reliance on:

- (a) paragraph 5(1)(a) (about persons escaping immediate threats to their lives); or
- (b) paragraph 5(1)(b) (about members of the Australian Defence Force); or
- (c) subsection 5(3) (about persons entering the area in connection with essential activities); or
- (d) subsection 5(4) (about persons entering the area with permission given by a relevant decision-maker); or
- (e) subsection 5(6) (about persons crossing water between designated areas) applying to a journey from a different designated area.

Subsection 6(2) provides that the person must take reasonable steps (having regard to the person's circumstances and reason for entering the area) to minimise the extent to which anyone else in the area is exposed to the person.

Schedule 1 – Designated areas

Schedule 1 provides a list of the areas in Queensland, Western Australia, South Australia and Northern Territory deemed to be the designated areas for the purposes of the determination.

Schedule 2 – Relevant decision-makers

Schedule 2 provides a table describing the offices, appointments and positions of the relevant decision-makers for each of the designated areas for the purposes of the determination.