

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 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 18 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 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. A person who fails to comply with a requirement or direction may commit a criminal offence (imprisonment for maximum 5 years, or 300 penalty units \$63,000).

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 located in Queensland, Western Australia, South Australia and Northern Territory.

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 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;
- 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;
- 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 the remote areas, a person entering a remote area in reliance of 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 remote 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 a 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, for a requirement, in the manner in which it 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.

The determination commences at 11:59pm by legal time in the Australian Capital Territory on the day it is registered, and remains in force for the duration of the human biosecurity emergency period.

Background

On 5 January 2020, the World Health Organization (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 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, 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 WHO to the disease caused by SARS-CoV-2 is Coronavirus disease 2019 (COVID-19). On 11 March 2020 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 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)).

These emergency powers may override any Commonwealth, state or territory law (ss 477(5) and 478(4)) although state and territory officials cannot be directed without agreement (s 478(5)). The remote communities requirements do not override any prohibitions on entry or activity under Australian law, and apply in addition to, and do not override, state and territory law. Biosecurity measures under a human biosecurity control order may continue to be imposed on an individual basis (ss 477(6) and 478(6)).

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

To ensure that the remote communities requirements are in place to address emergency human biosecurity risk, the determination commences at 11:59pm by legal time in the Australian Capital Territory on the day it is registered.

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 NIAA, with the relevant states and territories and Land Councils.

The determination is a non-disallowable legislative instrument under the *Legislation Act 2003*. 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).

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.

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.

Person is crossing water 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.

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

Section 6 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.

Section 6 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.