

## EXPLANATORY STATEMENT

### *Biosecurity Act 2015*

#### ***Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Amendment Determination (No. 1) 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 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. 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).

#### **Purpose**

The purpose of this instrument is to amend the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020* (the current Determination) to prevent cruise ships from entering Australian territory and require cruise ships to leave Australian territory, subject to limited exceptions, to prevent or control the entry or spread of COVID-19 in Australian territory (the Amendment Determination).

An extension to 15 June 2020 of the requirement in the current Determination made under section 477 of the Act (that international cruise ships must not enter Australian ports, unless an exception applies) is necessary for the management of the human biosecurity risk posed by COVID-19.

The Director of Human Biosecurity (who is also the Commonwealth Chief Medical Officer) has advised the Health Minister, and the Health Minister is satisfied, that the Amendment Determination is necessary to prevent or control the further entry or spread of a COVID-19 in 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 under the Amendment Determination to remain in force, once it commences, until 15 June 2020.

The Amendment Determination commences immediately after it is registered, and remains in force until 15 June 2020.

## **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)). For the avoidance of doubt, the Amendment Determination is not intended to override applicable quarantine and biosecurity requirements under Australian 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 requirements under the Amendment Determination are in place to address emergency human biosecurity risk, the Amendment Determination commences immediately after it is registered.

### **Consultation**

The Amendment Determination is supported by advice from the Director of Human Biosecurity.

Consultation also occurred with the Department of Home Affairs and the Department of Infrastructure, Transport, Regional Development and Communications relation to the Amendment Determination.

The Amendment Determination is a non-disallowable legislative instrument under the *Legislation Act 2003*. The Act provides for the Amendment 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 Amendment Determination is contained in the Attachment.

**Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Amendment Determination (No. 1) 2020**

**1 Name**

Section 1 provides for the Amendment Determination to be referred to as the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Amendment Determination (No. 1) 2020*.

**2 Commencement**

Section 2 provides that the Amendment Determination commences immediately after it is registered.

**3 Authority**

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

**4 Schedules**

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

**Schedule 1 – Amendments**

***Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020***

**Item 1 – Section 4 (Definitions)**

Item 1 inserts the following definitions:

**Collector** has the same meaning as in the *Customs Act 1901*.

Note: See subsection 8(1) of that Act

**cruise ship** means a vessel that:

- (a) has sleeping facilities for 100 or more passengers; and
- (b) is usually used to provide a service of sea transportation, being a service that:
  - (i) is provided in return for a fee payable by persons using the service; and
  - (ii) is available to the general public.

However, neither of the following is a **cruise ship**:

- (c) the vessel known as the Spirit of Tasmania I (IMO Number 9158446; Australian General Register of Shipping number 857101);
- (d) the vessel known as Spirit of Tasmania II (IMO Number 9158434; Australian General Register of Shipping number 857102).

**foreign cruise ship** means a cruise ship that is a foreign vessel.

**Item 2 – Section 4 (definition of international cruise ship)**

Item 2 repeals the definition of *international cruise ship*.

### **Item 3 – Section 4 (Definitions)**

Item 3 inserts the following definitions:

*overnight voyage* means a voyage that commences on one day and ends on any later day.

### **Item 4 – Section 5**

Item 4 repeals section 5, and in its place inserts new sections 5 and 6 containing requirements for cruise ships not to enter Australian territory or Australian ports before 15 June 2020, and for foreign cruise ships to leave Australian territory.

Subsection 5(1) puts in place new requirements on a cruise ship that enters Australian territory before 15 June 2020 to immediately leave Australian territory, unless there is a permission given by a Collector for the ship in force to either enter Australian territory or enter a port in Australian territory that the ship has not yet arrived at, or the ship is exercising the right of innocent passage; or the entry is necessary for the purposes of securing the safety of the ship or saving life at sea, or the voyage commenced in the Australian territory and is being conducted for the sole purpose of performing necessary maintenance to the ship.

Subsection 5(2) is a requirement on cruise ships to not enter a port in Australian territory before 15 June 2020, unless there is a permission given by a Collector in force for the ship to enter the port, or entry is necessary for the purpose of securing the safety of the ship or saving life at sea, or the voyage commenced in Australian territory and is being conducted for the sole purpose of performing necessary maintenance to the ship.

Subsection 5(3) requires that if there are any permissions given by a Collector under paragraphs 5(1)(a) or 5(2)(a) which were given subject to one or more conditions, the operator of the ship must comply with those conditions.

Subsection 6(1) requires foreign cruise ships in Australian territory before 15 June 2020 to leave Australian territory by the time that applies under either subsection 6(2) or 6(3), unless there is in force a permission given by a Collector for the ship to remain in Australian territory for a period and that period has not ended, or the ship is exercising the right of innocent passage; or it is necessary for the ship to remain in Australian territory for the purpose of securing the safety of the ship or saving life at sea.

Subsection 6(2) requires that, unless subsection (3) applies, cruise ships must leave Australian territory as soon as reasonably practicable (having regard to any need to refuel or reprovision the ship) after all passengers that are to disembark in Australian territory have disembarked from the ship if the ship entered Australian territory or an Australian port in accordance with a permission given as mentioned in paragraphs 5(1)(a) or (2)(a), or in any other case the later of either the commencement of this section and immediately after the ship's entry into the Australian territory.

Subsection 6(3) requires that if a permission is given as mentioned in paragraph 6(1)(a), then the time by which the ship must leave Australian territory is immediately after the end of the relevant period.

Subsection 6(4) requires that if a permission mentioned in paragraph 6(1)(a) is given subject to one or more conditions, the operator of the ship must comply with those conditions.