

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements – Retail Outlets at International Airports) 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).

Following this, the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Determination 2020* (the Determination) has determined the closure of most retail outlets operating within international terminals and international areas of joint domestic/international terminals at Australian international airports.

This Determination is in response to the COVID-19 pandemic, which continues to represent a severe and immediate threat to human health in Australia and across the globe, and it has the ability to cause high level of morbidity and mortality and to disrupt the Australian community socially and economically. As worldwide case numbers of the COVID-19 increase, there is evidence that a high proportion of COVID-19 cases within Australia have arisen directly or indirectly from returning international travellers. Further, it is apparent that social distancing measures are not being adequately observed by returning international passengers and people present in international airport terminals, and airport operators are experiencing difficulty enforcing social distancing. In particular passengers who have disembarked from an arriving international flight, or are awaiting an outbound international flight, are gathering (either independently or together) in unacceptably close proximity to each other. This is of particular

concern in retail outlets such as duty free stores, where large numbers of travellers tend to pass through and congregate while browsing or making purchases.

In accordance with section 477 of the Act, the Health Minister has determined that, subject to limited exceptions, retail outlets at international terminals and in the international area of joint domestic/international terminals at specified Australian international airports must cease trading. The exceptions are

- pharmacies; and
- shops that sell predominantly food and/or beverages that are located in departure areas of international terminals; and
- shops that sell predominantly food and/or beverages that are located in the departure areas of joint domestic/international terminals.

These exceptions are conditional on the operators of the shops taking steps to ensure social distancing among its customers. Further, the exemptions for shops selling food and/or beverages only apply when they sell only takeaway food and/or non-alcoholic beverages.

The Secretary of the Department of Infrastructure, Transport, Regional Development and Communications may, in exceptional circumstances, grant other exemptions, in writing. Any such exception is conditional on the operator of the retail outlet to which the exemption applies taking steps to ensure social distancing among its customers.

The Determination commences at 11.59pm (by legal time in the Australian Capital Territory) on the day this instrument is registered.

A person who fails to comply with the Determination may commit a criminal offence (imprisonment for maximum 5 years, or 300 penalty units).

Consultation

The operators of major international airports in Australia were consulted, including the operators of Sydney (Kingsford-Smith) Airport, Melbourne (Tullamarine) Airport, Brisbane Airport and Perth Airport. The Department of Infrastructure, Transport, Regional Development and Communications, the Department of Home Affairs and the Department of the Prime Minister and Cabinet were also consulted. The Determination was made following advice from the Australian Health Protection Principal Committee and the Director of Human Biosecurity (the Commonwealth Chief Medical Officer).

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

ATTACHMENT

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements – Retail Outlets at International Airports) Determination 2020

Notes on Clauses

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 – Retail Outlets at International Airports) 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 this instrument is registered.

3 Authority

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

4 Definitions

This section sets out the definitions of key phrases in the instrument.

The definition of ‘designated international airport’ sets out the international airports to which the requirements in the instrument are to apply.

The definition of ‘designated retail outlet’ sets out the retail outlets to which the requirements in the instrument are to apply. A retail outlet includes any business or undertaking engaged in retail activity, i.e. selling goods or services to customers in person.

The definition of ‘international area’ is intended to capture the areas of international airports which are used by passengers on international (and not domestic) flights. Most international airports have separate domestic and international terminals, in which case the ‘international area’ is the entire international terminal. However, at international airports where the one terminal caters for both international and domestic air services, the ‘international area’ is the area within the terminal which can be accessed by passengers on international air services but not passengers on domestic air services.

5 Requirements for designated retail outlets

This section sets out requirements for designated retail outlets.

Section 5(1) imposes the key requirement in this instrument. It requires the operator of a designated retail outlet (being a retail outlet in the international area of an international

airport specified in the instrument) to not trade, or permit any trade to occur, at the outlet, unless an exemption applies.

Section 5(2) provides an exemption to pharmacies from the requirement to not trade or permit any trade.

Section 5(3) provides an exemption for retail outlets that sell predominantly food and/or beverages, where the outlet is located in the departure area of an international terminal or in the departure area of a joint domestic/international terminal. However, the exemption only applies when the outlet is selling only takeaway food and/or non-alcoholic beverages. This is to ensure departing international passengers are able to access food and drink while waiting for their flights, but only takeaway food/drink.

Section 5(4) specifies that the exemptions for pharmacies and food/beverage outlets are conditional on the operator of the outlet taking steps to ensure social distancing (e.g. at least 1.5 metres between all persons and ensuring there is 1 person per 4 square metres within or around the outlet) among its customers. Such measures could include adequate signage specifying the maximum number of persons that can occupy the outlet and marking out spots 1.5 metres apart in all waiting areas in and around the outlet.

6 Exemptions granted by Secretary

Section 6(1) allows the Secretary of the Department of Infrastructure, Transport, Regional Development and Communications to grant exemptions in writing from the requirement in s 5(1). Such exemptions can only be granted in exceptional circumstances.

Section 6(2) provides that an exemption granted by the Secretary must be in writing. Such an exemption is not a legislative instrument as it does not fall within the classes of instruments defined as legislative instruments by the *Legislation Act 2003*.

Section 6(3) specifies that an exemption granted under this section is conditional on the operator of the outlet taking steps to ensure social distancing (e.g. at least 1.5 metres between all persons and ensuring there is 1 person per 4 square metres within or around the outlet) among its customers. Such measures could include adequate signage specifying the maximum number of persons that can occupy the outlet and marking out spots 1.5 metres apart in all waiting areas in and around the outlet.