

EXPLANATORY STATEMENT

Biosecurity Act 2015

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

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (the Declaration) has been made pursuant to section 475 of the *Biosecurity Act 2015* (the Act), and declares that a human biosecurity emergency exists regarding the listed human disease ‘human coronavirus with pandemic potential’ (COVID-19). The human biosecurity emergency period is in force for 3 months beginning immediately after registration of the Declaration, on 18 March 2020.

During a human biosecurity emergency period, the Minister for Health 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 (punishable by imprisonment for a maximum of 5 years, or 300 penalty units, or both).

Purpose

This instrument amends the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020* (the current Determination) to prevent or control the entry or spread of COVID-19 in Queensland, Western Australia, South Australia and the Northern Territory.

The amendments are necessary for the management of the human biosecurity risk posed by COVID-19 and to improve the operational effectiveness of the current Determination.

The key feature of the amendments is to limit the operation of the essential activities exemption to cases of:

- urgency; or,
- when persons are operating in a manner agreed with a human biosecurity officer to minimise the extent to which other persons in the area are exposed to the persons carrying out those operations.

Other amendments include:

- allowing a person with an urgent need to carry out an essential activity related to commercial primary production or broadcasting services to enter a designated area;
- allowing the Director of Human Biosecurity, a chief human biosecurity officer for a State or Territory, a human biosecurity officer, a biosecurity official and an official performing functions under an Australian law relating to public health or biosecurity to enter a designated area in the course of the person’s duties as an official;
- designating the area known as the Town of Yulara in the Northern Territory;
- excluding the area within the boundary of the Town of Mataranka in the Northern Territory, and portions of private land near the Town of Mataranka as a designated area.

In amending the definition of essential activity to include activities relating to commercial primary production and broadcasting services, such that entry to a designated area to perform those activities may, subject to conditions, be permitted, the proposed amendments further ensure that the requirements under the current Determination are no more restrictive or intrusive than is required by the circumstances.

The Director of Human Biosecurity (who is also the Commonwealth Chief Medical Officer) has advised the Minister for Health, and the Minister for Health is satisfied, that these amendments are necessary to prevent or control the further entry or spread of COVID-19 in parts of Australian territory and that those amendments:

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

In addition to being satisfied of these matters the Minister for Health is satisfied that the amended requirement will only apply as long as is necessary.

The amended determination commences the day after the instrument is registered, and remains in force for the duration of the human biosecurity emergency period, unless it is revoked earlier. Advice from the Director of Human Biosecurity supports the necessity of the length of time the amended determination is to remain in force.

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. 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 is disrupting the Australian community socially and economically.

Emergency requirements and directions

An emergency requirement is a non-disallowable legislative instrument (sub-section 477(2)). The Minister for Health makes emergency requirements or gives directions personally (section 474).

The requirements that the Minister for Health 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 (sub-section 477(3)).

Requirements determined under section 477 apply despite any provision of any other Australian law (sub-section 477(5)); with the potential consequence that a person who acts in accordance with a requirement may be protected from criminal liability that would otherwise attach to a person's required actions under State, Territory or Commonwealth law.

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 amendment is in place to address emergency human biosecurity risk, the amendment commences immediately after it is registered.

Consultation

These amendments to the determination are supported by advice from the Director of Human Biosecurity and the Deputy Secretary of the Department of Agriculture, Water and Environment.

Consultation also occurred with the relevant States and Territories, relevant Land Councils, the Prime Minister, Attorney-General, the Minister for Defence, the Minister for Home Affairs, the Minister for Indigenous Australians and the Minister for Agriculture, Drought and Emergency Management.

The amended determination is a non-disallowable legislative instrument under the *Legislation Act 2003*. The Act provides for the requirement 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 amendments is contained in the Attachment.

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

2 Commencement

Section 2 provides that the Amendment Determination commences the day after the instrument 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 the 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 for Remote Communities) Determination 2020

Item 1 – Section 4 (Definitions)

Item 1 inserts the following definition:

commercial primary production means:

- (a) commercial primary production of:
 - (i) food; or
 - (ii) products that, with further processing, will become (at least in part) food; or
- (b) commercial processing of primary products to make food from them; or
- (c) provision of veterinary services for animals kept, used or bred for commercial primary production described in paragraph (a); or
- (d) aquaculture; or
- (e) agribusiness.

This item is intended to include commercial primary production including agribusiness, aquaculture and commercial fishing. The broad wording ‘provision of veterinary services for animals kept, used or bred for commercial primary production’ is intended to be wide enough to cover veterinary services for animals (such as sheepdogs, stock horses and stud bulls) that are used for primary production, even if these are not intended to be themselves consumed as food.

Item 2 – Section 4 (definition of *essential activity*)

Item 2 omits “or repairing” and substitutes this with “repairing or replacing” to paragraph (e) of the definition of essential activity. This is intended to ensure that the replacement of such equipment or infrastructure is clearly covered.

Item 3 – Section 4 (definition of *essential activity*)

Item 3 adds broadcasting services to subparagraph (e)(i) of the definition of essential activity.

Item 4 – Section 4 (definition of *essential activity*)

Item 4 adds carrying out commercial primary production to the end of the definition of an essential activity.

Item 5 – Section 5

Item 5 allows the Director of Human Biosecurity, a chief human biosecurity officer for a State or Territory, a human biosecurity officer, a biosecurity official, or an official performing functions under an Australian law relating to public health or biosecurity in the course of their duties as an official to enter a designated area to respond to a new biosecurity incident. This item is intended to allow such persons urgent access to remote communities in order to be able to respond to a biosecurity threat.

Item 5 also addresses any amendment made to the designated areas in Schedule 1 and is intended to ensure that a person who was in the area, immediately before the commencement of the amendment does not fail to comply with the requirement in section 5.

Item 6 – Section 5

Item 6 repeals and substitutes subsection 5(3). Subsection 5(3) now provides as follows:

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

- (3) This subsection applies to a person entering a designated area if:
- (a) the person either:
 - (i) is entering the area primarily to engage in an essential activity in the area that requires the person to be in the area; or
 - (ii) is the person in charge of, or a member of the crew of, a conveyance entering the area primarily to transport one or more persons described in subparagraph (i); and
 - (b) either:
 - (i) there is an urgent need for the person to engage in the essential activity in the area or to be in charge of, or a member of the crew of, the conveyance entering the area; or
 - (ii) the person is entering the area primarily to engage in an essential activity 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 person carrying out the activity.

Subsection 5(3)(b)(i) is intended to allow a person engaging in an essential service to enter a designated area without having to be isolated for 14 days only where there is an urgent need for them to provide an essential service or where there has been an agreement with a human biosecurity officer for the person to enter.

An ‘urgent need’ for a person to engage in an essential activity as per subsection 5(3)(b)(i) may include:

- responding to an imminent threat to a person’s health such as a medical emergency or an emergency retrieval;
- responding to an imminent threat to public safety requiring additional police intervention;
- responding to a significant human, plant or animal disease outbreak;
- repairing or replacing essential infrastructure, such as a fallen power line.

Subsection 5(3)(b)(ii) is intended to allow a person engaging in an essential service to enter a designated area without having to be isolated for 14 days where there is an agreement with a human biosecurity officer for the person to enter. It requires the development of a risk management plan to support the essential activity and for that plan to be agreed with a human biosecurity officer. Risk management plans could be developed for individual activities or to provide overarching guidance for whole classes of essential services (for example police activities, regular replacement of health care personnel or the safe conduct of mining operations).

The specific content of the risk management plans may vary depending on the local context and requirements of the specific activity and need to be agreed with a human biosecurity officer. Plans could include but not be limited to:

- screening requirements for the selection of personnel to undertake the essential activity (in addition to compliance with section 5(1));
- screening requirements at entry points;
- daily requirements, self-monitoring and checks to be performed while undertaking the essential activity within the designated area;
- protocols in the observance of social distancing and contact-minimisation activities having regard to the person’s circumstances and reason for entering the area (consistent with section 6).

Item 7 – Section 6

Item 7 adds officials with duties relating to public health or biosecurity to section 6, which provides that persons entering designated areas in reliance on section 5 are to minimise contact with others in those areas.

Item 8 – Schedule 1

Item 8 adds “or is excluded by subclause (4)” to the end of subclause 4(1) of Schedule 1.

Item 9 – Schedule 1

Item 9 inserts at the end of subclause 4(3) of Schedule 1 the area known as the Town of Yulara unincorporated area, as described in the *Northern Territory Government Gazette* No. 34, published on 20 August 1976.

Item 10 – Schedule 1

Item 10 excludes, as a designated area, the area within the boundary of the Town of Mataranka in the Northern Territory, as well as portions of private land near the Town of Mataranka.

Item 11 – Schedule 2

Item 11 inserts after table item 3, a new position being a police officer who is of the rank of superintendent or above to the table of relevant decision-makers for the designated areas in Western Australia.

Item 12 – Schedule 2

Item 12 inserts after table item 4, a new position being a human biosecurity officer who is an employee of the Department of Health in the Northern Territory to the table of relevant decision-makers for the designated areas in the Northern Territory.