

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment Determination (No. 2) 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. It ceases on 17 June 2020, unless extended by the Governor-General.

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.

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 changes are to:

- require a person entering a designated area to have not been in a foreign country, rather than outside Australian territory, in the 14 days immediately prior to entry;
- add as a designated area the Town of Weipa in Queensland;
- remove as designated areas, the Dunjiba Community and Yarilena Community, in South Australia;
- exclude certain areas near Katherine, Barkly and Alice Springs as designated areas in the Northern Territory.

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 each requirement as amended:

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

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

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment Determination (No. 2) 2020* (Amendment 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 Amendment 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 Determination commences immediately after it is registered.

Consultation

These amendments to the current Determination are supported by advice from the Director of Human Biosecurity, Hon Ken Wyatt AM MP, Minister for Indigenous Australians, and Anastacia Palaszczuk MP, Minister for Trade and Premier of Queensland.

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

The Amendment Determination is a non-disallowable legislative instrument under the *Legislation Act 2003*. The Act provides for requirements 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. 2) 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. 2) 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) Amendment Determination (No.2) 2020

Item 1 – Section 5

Item 1 omits “outside Australian territory” and substitutes “in a foreign country” from subparagraph 5(1)(c)(iii).

Item 1 requires a person entering a designated area to have not been in a foreign country, rather than outside Australian territory, in the 14 days immediately prior to entry (for example, cargo ships and non-cruise ship maritime crew). ‘Australian territory’ is defined in section 12 of the Act to include ‘the coastal sea of Australia’, which in turn is defined in section 15B(4) of the *Acts Interpretation Act 1901* to include Australia’s territorial seas (which generally extend 12 nautical miles from the low water line along the coast).

Item 1 aims to address situations under the current Determination where persons are unable to enter a designated area if they have been outside Australian territory, but not a foreign country, in the 14 days immediately prior to entry, and have otherwise met the requirements of the current Determination.

Item 2 – Schedule 1

Item 2 omits “Wujal.” from paragraph 1(l) and substitutes “Wujal;”.

Item 3 – Schedule 1

Item 3 adds at the end of subclause 1(1) “and the areas excluded from the Cook local government area under the agreement made under the *Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957* (Qld).”

Item 3 adds as a designated area, the Town of Weipa in Queensland and relies on paragraph 5(1)(bb) of the current Determination to deal with transitional issues relating to persons in the Town of Weipa when the Amendment Determination commences.

Item 4 – Schedule 1

Item 4 repeals paragraph 3(1)(b). Item 4 removes as a designated area, the area on which the community known as the Dunjiba Community in South Australia is located.

Item 5 – Schedule 1

Item 5 omits “Warta;” from paragraph 3(1)(f) and substitutes “Warta.”.

Item 6 – Schedule 1

Item 6 repeals paragraph 3(1)(g). Item 6 removes as a designated area, the area on which the community known as the Yarilena Community in South Australia is located.

Item 7 – Schedule 1

Item 7 inserts before subclause 4(1) the description, “General description of designated area”.

Item 8 – Schedule 1

Item 8 adds at the end of subclause 4(1) “,(5), (6) or (7)”.

Item 8 explains that clause 4(1) describes the area consisting of the local government areas covered by subclause (2) and the areas covered by subclause (3) except so much of those areas as is subject to a pastoral lease or is excluded by subclause (4), (5), (6) or (7).

Item 9 – Schedule 1

Item 9 inserts before subclause 4(2) the description “Areas generally included in designated area”.

Item 10 – Schedule 1

Item 10 inserts before subclause 4(4) the description, “Area around Mataranka excluded from the designated area”.

Item 10 clarifies that the areas referred to in subclause 4(4) are areas around Mataranka in the Northern Territory.

Item 11 – Schedule 1

Item 11 adds at the end of clause 4:

Area near Katherine excluded from designated area

- (5) This subclause excludes NT Portion 3701.

Areas in Barkly local government area excluded from designated area

- (6) This subclause excludes NT Portions 2439, 3729 and 4472.

Areas around Alice Springs excluded from designated area

- (7) This subclause excludes:
- (a) NT Portions 461, 568, 570, 801, 1213, 1691, 3370, 3805, 3806, 3807, 3808, 3809, 3810, 4418, 4699 and 5624; and
 - (b) Lots 1 and 2 in the Townsite of Amoonguna.

Item 11 excludes certain areas near Katherine, Barkly and Alice Springs as designated areas in the Northern Territory.