

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity Repeal (Human Health Response Zone) (Swissotel Sydney) Determination 2020

Subsection 113(1) of the *Biosecurity Act 2015* (the Act) provides that the Director of Human Biosecurity may determine that a specified area within a State or Territory is a human health response zone (zone) if satisfied that it is necessary to do so for the purposes of preventing, or reducing the risk of, a listed human disease emerging, establishing itself or spreading in Australian territory or a part of Australian territory.

The purpose of the *Biosecurity Repeal (Human Health Response Zone) (Swissotel Sydney) Determination 2020* (the Determination) is to repeal the zone created for temporary isolation of individuals who returned to Australia by aircraft after having been passengers on the Norwegian Jewel cruise ship. The individuals have completed their 14 day quarantine period, and are no longer in the zone. The zone is therefore no longer required by the Commonwealth for the purpose of preventing, or reducing the risk of ‘human coronavirus with pandemic potential’ (COVID-19), a listed human disease under the Act, emerging, establishing itself or spreading in Australian territory.

The Determination relies on subsection 33(3) of the *Acts Interpretation Act 1901* which supports the use of subsection 113(1) of the Act for both the making and the repeal of a zone determination. The zone was in force for 3 months, on the basis that it would be repealed earlier if no longer necessary for its purpose.

The zone was:

- Swissotel, 68 Market Street, Sydney in New South Wales, commenced 25 March 2020, *Biosecurity (Human Health Response Zone) (Swissotel Sydney) Determination 2020*.

Consultation

In accordance with section 114 of the Act, before making the Determination the Director of Human Biosecurity consulted with the Chief Health Officer for New South Wales, and with the Director of Biosecurity.

The Determination commences on the day after it is registered on the Federal Register of Legislation. In addition, and as required by subsection 115 of the Act, the Director of Human Biosecurity will ensure that the Determination is made public by publication on the Department of Health website.

The Determination is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the Determination.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the instrument

The *Biosecurity Repeal (Human Health Response Zone) (Swissotel Sydney) Determination 2020* (the Determination) repeals the *Biosecurity (Human Health Response Zone) (Swissotel Sydney) Determination 2020*.

The *Biosecurity (Human Health Response Zone) (Swissotel Sydney) Determination 2020* created a zone for the temporary isolation of individuals who returned to Australia by aircraft after having been passengers on the Norwegian Jewel cruise ship.

The individuals have completed their 14 day quarantine period, and are no longer in the zone. The zone is therefore no longer required by the Commonwealth for the purpose stated in subsection 113(1) of the *Biosecurity Act 2015* (the Act) of preventing or reducing the risk of a listed human disease ('human coronavirus with pandemic potential' (COVID-19)) emerging, establishing itself or spreading in Australian territory.

Human rights implications

As the Determination operates only to repeal an existing legislative instrument, it does not engage any of the applicable rights or freedoms.

The *Biosecurity (Human Health Response Zone) (Swissotel Sydney) Determination 2020* engages Article 12 of the International Covenant on Civil and Political Rights (ICCPR), specifically, the right to freedom of movement. This determination operates to prevent individuals other than certain specified persons from entering the designated human health response zone while it is being used to temporarily house individuals returning to Australia.

The right to freedom of movement under Article 12 of the ICCPR relevantly includes the right to move freely within a country for those who are lawfully within the country. The right may be limited in certain circumstances, including where the limitation is justified on the grounds of public health. The limitation must be necessary and proportionate to protect the purpose for which it is imposed and should be as least intrusive as possible to achieve the desired result.

The *Biosecurity (Human Health Response Zone) (Swissotel Sydney) Determination 2020* is directed to the legitimate public health objective of restricting entry into a designated human health response zone while it is being used to temporarily house

returning travellers in order to prevent or reduce the risk of COVID-19 further establishing itself or spreading in Australian territory.

The following requirements ensure that the power of the Director of Human Biosecurity (Director) to establish a human health response zone complies with Article 12 of the ICCPR by being a necessary and proportionate restriction of an individual's freedom of movement:

- the Director must be satisfied that the requirements are appropriate and adapted to prevent, or reduce the possibility of, the emergence, establishment or spread of a listed human disease (subclause 113(4));
- the Director must also consult with the Chief Health Officer in the relevant state or territory prior to declaring the zone and the Director of Biosecurity (section 114);
- the determination must be made public (subclause 115(1));
- the determination may only be in place for three months (subparagraph 113(3)(c)); and
- the Director must not set requirements in a zone that subject individuals to biosecurity measures that may be imposed under a human biosecurity control order (subclause 113(5)).

In making the *Biosecurity (Human Health Response Zone) (Swissotel Sydney) Determination 2020*, the Director was satisfied that the determination of the zone, and the requirements for individuals entering or leaving the zone, were both necessary, and appropriate and adapted, to prevent or reduce the risk of COVID-19 emerging, establishing itself or spreading in Australian territory. The Director also consulted with the Chief Health Officer for the State of New South Wales and the Director of Biosecurity. All other relevant legislative requirements relating to human health response zone determinations were complied with.

Conclusion

The Determination is compatible with human rights because its operation is limited to repealing an existing legislative instrument and therefore it does not raise any human rights issues. Any limitations imposed on the right to freedom of movement under Article 12 of the ICCPR by the *Biosecurity (Human Health Response Zone) (Swissotel Sydney) Determination 2020* are also reasonable, necessary and proportionate.