

## EXPLANATORY STATEMENT

### *Biosecurity Act 2015*

#### ***Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No.3) Determination 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 ceases on 17 September 2020, unless further 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 of 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, emergence, establishment and spread of COVID-19 in designated areas in Queensland, Western Australia, South Australia and the Northern Territory.

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

The amendments:

- allows a person to enter a designated area (in a manner agreed with a human biosecurity officer) to assist in organising an election or canvassing for votes within a remote community;
- allow an official performing functions under an Australian law relating to requirements on the export of food or agricultural commodities to enter a designated area in the course of the official’s duties as required to fulfil their regulatory functions;
- address situations under the current Determination where oil rig workers cannot enter a designated area while transiting to or from rigs and platforms, in accordance with a biosecurity plan;
- clarify that a vessel that carries crew that have been in a foreign country in the last 14 days can dock at a port that is in a designated area provided that the crew stay on board the vessel;
- exclude the area on which the community known as the Davenport Community in South Australia is located as a designated area;
- exclude areas near Katherine and the Barkly local government area in the Northern Territory as designated areas and clarify the exclusion of areas surrounding Alice Springs as designated areas;

- exclude the designated areas in the Northern Territory from the current Determination after 5 June 2020. This amendment is made at the request of the Northern Territory Government. This amendment reflects their confidence that the lifting of the current Determination in the Northern Territory will pose a low risk to Aboriginal and Torres Strait Islander people living in remote communities and that they have the appropriate measures in place.

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, as amended, the requirements in the Determination will continue to be necessary to prevent or control the further entry, emergence, establishment and spread of COVID-19 in parts of Australian territory and that those requirements:

- are likely to be effective in, or contribute to, achieving their purpose;
- are appropriate and adapted to achieve their purpose;
- are no more restrictive or intrusive than is required in the circumstances, including 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.

For those areas that are proposed to be excluded as designated areas, the Minister for Health considers it is appropriate that the requirement no longer apply in those areas from the time of their removal – i.e. that the requirement is no longer necessary to prevent or control the entry or spread of COVID-19 in those parts of Australian territory. Exclusion of these areas will allow for improved access to nearby townships and recreational facilities and are supported by the relevant community councils and boards.

Sections 1 to 4 and Schedule 1 of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No.3) Determination 2020* (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. Schedule 2 of the amended Determination commences on 5 June 2020 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)* 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 (subsection 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 (subsection 477(3)).

Requirements determined under section 477 apply despite any provision of any other Australian law (subsection 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.

Sections 1 to 4 and Schedule 1 of the amendment Determination commences immediately after it is registered. Schedule 2 of the amendment Determination commences on 5 June 2020.

### **Consultation**

Consultation occurred with the relevant States and Territories, relevant Land Councils, the Prime Minister, the 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 (No.3) Determination 2020***

**1 Name**

Section 1 provides for the instrument to be referred to as the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No.3) Determination 2020*.

**2 Commencement**

Section 2 provides that sections 1 to 4 (and anything in the instrument not elsewhere covered by the table) and Schedule 1 commences the day after the instrument is registered.

Section 2 provides that Schedule 2 commences on 5 June 2020.

**3 Authority**

Section 3 provides that the instrument 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 instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## **Schedule 1 – Amendments commencing day after registration**

### ***Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020***

#### **Item 1 – Section 4**

Item 1 inserts the following definition into subsection 4(1):

*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.

Item 1 defines the meaning of cruise ship for the purposes of the new section 7. The definition is the same as used in the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Cruise Ships) Determination 2020*.

#### **Item 2 – Section 4**

Item 2 adds at the end of subsection 4(1) (the end of the definition of essential activity):

- (l) doing any of the following things, in a manner that is agreed with a human biosecurity officer so as to reduce as far as practicable the extent to which other persons in the area are exposed to the persons doing the things, connected with an election for a member of a legislature whose electorate includes some or all of the area:
  - (i) enrolling voters;
  - (ii) canvassing votes;
  - (iii) putting up or taking down signs relating to the election;
  - (iv) providing facilities for voting;
  - (v) voting;
  - (vi) scrutinising votes.

Item 2 allows a person, such as a candidate and electoral authorities, to do the things outlined in paragraph 4(1)(l) in connection with an election for a member of a legislature whose electorate includes some or all of the area.

Item 2 applies to Commonwealth, State and Territory elections and is intended to allow candidates to canvass voters and for electoral authorities to facilitate the conduct of elections.

#### **Item 3 – Section 5**

Item 3 omits “or biosecurity” from subparagraph 5(1)(ba)(v) and substitutes “, biosecurity or requirements on the export of food or agricultural commodities”.

Item 3 is intended to enable an official performing functions related to the export of food or agricultural commodities to enter designated areas in the course of their duties as required to fulfil their regulatory functions.

#### **Item 4 – Section 5**

Item 4 adds to the end of subsection 5(1):

- ; or (d) none of paragraphs (a) to (c), but all of the following, apply to the person entering the area:
- (i) the person is entering the area on board a vessel as the person in charge of the vessel or a member of the crew of the vessel;
  - (ii) immediately before the entry, the person does not have any of the signs or symptoms of human coronavirus with pandemic potential;
  - (iii) in the 14 days immediately before the entry, the person has not been exposed, without adequate personal protective precautions, to human coronavirus with pandemic potential;
  - (iv) the person is not entering the area wholly or partly for the purpose of engaging in an activity in the area that is prohibited by or under an Australian law;
  - (v) the person's entry to the area is not prohibited by or under an Australian law (other than this section).

Item 4 is intended to clarify that cargo ships that are in transit and carrying crew that have been in a foreign country in the last 14 days can enter a port that is in a designated area provided that the crew stay on board the vessel. Item 4 expressly excludes cruise ships from this provision.

#### **Item 5 – Section 5**

Item 5 adds at paragraph 5(5)(c):

- (c) either:
  - (i) the journey does not involve a person in the area (other than a person travelling with the entrant) being exposed to the entrant or a person travelling with the entrant; or
  - (ii) the journey is to or from a resources industry fixed structure (within the meaning of the *Sea Installations Act 1987*), or a resources industry mobile unit (within the meaning of that Act), that is outside the area, and exposure of a person (other than a person travelling with the entrant) in the area to the entrant is managed in a manner approved by a human biosecurity officer.

Item 5 is intended to allow oil rig workers to enter a designated area while transiting to or from oil rigs and platforms in a manner approved by a human biosecurity officer. The amendment will allow for example, oil rig workers to transit through an airport in a designated area where a risk management plan has been developed and agreed to by a human biosecurity officer.

#### **Item 6 – Section 6**

Item 6 inserts after section 6 a new section 7:

#### **Section 7 – Persons entering designated areas on board vessels to stay on board**

- (1) This section applies to a person who enters a designated area on board a vessel in reliance on paragraph 5(1)(d) (about crew of vessels other than cruise ships who are not covered by any of paragraphs 5(1)(a) to (c)).
- (2) While the vessel is in the designated area, the person must:
  - (a) remain on board the vessel unless:
    - (i) the person is escaping an immediate threat to the person's life; or
    - (ii) the person is removed from the vessel to be given urgent medical treatment;
  - and

- (b) take adequate precautions to reduce the risk of another person on board the vessel, who is neither the person in charge of the vessel nor a member of the crew of the vessel, being exposed to human coronavirus with pandemic potential.
- (3) If the person leaves the vessel while it is in the designated area, the person must take reasonable steps (having regard to the person's circumstances and reason for leaving the vessel) to minimise the extent to which anyone else in the area is exposed to the person.

Item 6 is intended to outline the requirements that apply to a person who enters a designated area on board a vessel (other than a cruise ship) in reliance on paragraph 5(1)(d). Item 6 provides exemptions to the requirement for a person to remain on board a vessel and includes requiring a person to take adequate precautions to reduce the risk of another person's exposure to human coronavirus with pandemic potential.

#### **Item 7 – Schedule 1**

Item 7 repeals paragraph 3(1)(a) of Schedule 1 of the current Determination. Item 7 excludes the area on which the community known as the Davenport Community in South Australia is located as a designated area.

#### **Item 8 – Schedule 1**

Item 8 omits "Portion 3701" from subclause 4(5) of Schedule 1 and substitutes "Portions 2641, 3629, 3701 and 4802". Item 8 updates the areas near Katherine in the Northern Territory that are excluded as designated areas.

#### **Item 9 – Schedule 1**

Item 9 omits "2439, 3729 and 4472" from subclause 4(6) of Schedule 1 and substitutes "783, 1539, 1553, 1744, 1918, 1922, 2439, 3729, 3735, 4114, 4439, 4440, 4448 and 4472". Item 9 updates the areas near the Barkly local government area in the Northern Territory that are excluded as designated areas.

#### **Item 10 – Schedule 1**

Item 10 inserts after paragraph 4(7)(a) of Schedule 1:

- (aa) each area that:
  - (i) is surrounded by one or more of the NT Portions mentioned in paragraph (a); or
  - (ii) separates parts of one of the NT Portions mentioned in paragraph (a);and

Item 10 clarifies the areas surrounding Alice Springs in the Northern Territory which are excluded as designated areas.

## **Schedule 2 – Amendments commencing 5 June 2020**

### ***Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020***

#### **Item 1 – Section 4**

Item 1 repeals the definition of *NT Land Rights Act* from subsection 4(1).

#### **Item 2 – Section 4**

Item 2 omits “Territory” from paragraph 4(1)(a) (definition of *relevant decision-maker*).

#### **Item 3 – Section 4**

Item 3 omits “Territory” from subsection 4(2).

#### **Item 4 – Section 5**

Item 4 omits “Territory” from subparagraph 5(1)(ba)(ii).

#### **Item 5 – Clause 4 of Schedule 1**

Item 5 repeals clause 4 of Schedule 1.

#### **Item 6 – Clause 1 of Schedule 2**

Item 6 repeals table items 4A to 18 in clause 1 of Schedule 2.

Items 1 – 6 exclude the designated areas in the Northern Territory from 5 June 2020. The Health Minister is satisfied, based on information provided by the Northern Territory Government, that it is no longer necessary to apply the requirements to designated areas in the Northern Territory from 5 June 2020.