

## EXPLANATORY STATEMENT

### *Biosecurity Act 2015*

#### **Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) 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).

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 COVID-19, in Australian territory or a part of Australian Territory.

#### **Purpose**

The purpose of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Cruise Ships) Amendment (No. 1) Determination 2020* (the Amendment Determination) is to amend the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Cruise Ships) Determination 2020* (the Determination), to provide that the requirements are in effect for the duration of the human biosecurity emergency period (unless revoked earlier).

The Determination prevents a cruise ship from entering Australian territory or Australian ports, unless an exemption applies to the ship. A cruise ship that enters Australian territory on an overnight voyage must immediately leave Australian territory unless:

- the cruise ship has permission by a Collector for the ship:
  - to enter Australian territory; or
  - to enter a port in Australian territory that the ship has not yet arrived at; or
- the ship is exercising the right of innocent passage; or
- the entry is necessary for the purposes of securing the safety of the ship or saving life at sea; or
- the voyage commenced in Australian territory and is being conducted for the sole purpose of performing necessary maintenance to the ship.

A cruise ship that is on an overnight voyage and in Australian territory must not enter a port in Australian territory unless:

- the cruise ship has permission by a Collector for the ship to enter the port;
- the entry is necessary for the purpose of securing the safety of the ship or saving life at sea; or
- the voyage commenced in Australian territory and is being conducted for the sole purpose of performing necessary maintenance to the ship.

The Determination further provides that foreign cruise ships in Australian territory must leave Australian territory:

- if there is permission from a Collector in place for the ship to remain in Australian territory for a period: immediately after the end of that period; or
- otherwise: as soon as reasonably practicable (having regard to any need to refuel or reprovision the ship) after:
  - in the case of a ship that enters Australian territory or an Australian port in accordance with a permission by the Australian Border Force (ABF) that all the passengers that are to disembark in Australia have done so; or
  - in the case of any other ship—the commencement of the relevant provision of the Determination or the ship’s entry into Australia (whichever is later) unless they have permission from the ABF.

Amending the Determination to provide that the requirements are in effect for the duration of the human biosecurity emergency period is necessary to further protect Australia’s health and quarantine capacity from cruise ship operations.

The Acting Director of Human Biosecurity (who is also the Acting Commonwealth Chief Medical Officer) has advised the Minister for Health, and the Minister for Health is satisfied, that the Determination continues to be necessary to prevent or control the entry, emergence, establishment or spread of COVID-19 in Australian territory.

The Acting Director of Human Biosecurity has advised the Minister for Health, and the Minister for Health is satisfied, that each requirement:

- is likely to be effective in, or contribute to, achieving its purpose; and
- is appropriate and adapted to its purpose; and
- is no more restrictive or intrusive than required in the circumstances, including 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 it is necessary for the requirements to remain in force for the duration of the human biosecurity emergency period unless it is revoked earlier.

The Determination is drafted to avoid trespassing on rights and liberties to the greatest extent possible, consistent with the imperative of implementing the measures necessary to prevent or control the further entry, emergence, establishment or spread of COVID-19 in Australian territory.

The Amendment Determination commences the day after registration. The Amendment Determination is automatically repealed after its commencement (section 48A of the *Legislation Act 2003*) as it is incorporated into the Determination itself. The Determination remains in force for the duration of the human biosecurity emergency period unless it is revoked earlier.

## **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 under section 42 of the Act. 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)’. 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.

### *Emergency requirements and directions*

An emergency requirement is a non-disallowable legislative instrument (see subsection 477(2) and the *Legislation Act 2003*). The Act provides for the Amendment Determination 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. The Minister for Health makes emergency requirements or gives directions personally (section 474).

The requirements that the Minister for Health may determine under section 477 of the Act include, but are not limited to: 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 subsection 477(1) of the Act 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 the 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.

The Amendment Determination has been made relying on subsection 477(1) of the Act, as affected by subsection 33(3) of the *Acts Interpretation Act 1901*.

The Amendment Determination commences the day after it is registered on the Federal Register of Legislation.

### **Consultation**

The Amendment Determination is supported by advice from the Acting Director of Human Biosecurity.

Consultation also occurred with the Department of Home Affairs; the Department of Infrastructure, Transport, Regional Development and Communications; the Attorney-General’s Department; the Director of Biosecurity (who is also the Secretary of the Department of Agriculture, Water and the Environment); and the Department of Prime Minister and Cabinet in relation to the Amendment Determination.

A provision by provision description of the Amendment Determination is contained in the Attachment.

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

**1 Name**

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

**2 Commencement**

Section 2 provides that the instrument commences the day after it is registered.

**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 this 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**

This Schedule provides for the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Cruise Ships) Determination 2020* (the Determination) to be amended.

**Item 1 – Section 4 (definition of *cessation time*)**

Item 1 repeals the definition of “cessation time” so that the requirements are in effect for the duration of the human biosecurity emergency period (unless revoked earlier).

**Item 2 – Section 5 (heading)**

Item 2 omits “before cessation time” from the heading.

**Item 3 – Subsection 5(1)**

Item 3 omits “before the cessation time” in subsection 5(1) of the Determination.

**Item 4 – Subsection 5(2)**

Item 4 omits “territory before the cessation time” and substitutes with “territory” in subsection 5(2) of the Determination.

**Item 5 – Subsection 6(1)**

Item 5 omits “before the cessation time” in subsection 6(1) of the Determination.

**Item 6 – Paragraph 6(2)(b)**

Item 6 repeals paragraph (6)(2)(b) of the Determination, and substitutes it with “(b) in any other case – the ship’s entry into Australian territory”. This amendment updates paragraph 6(2)(b) of the Determination, which refers to a time that has now passed.