

EXPLANATORY STATEMENT

Biosecurity Act 2015

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

Subsection 477(1) of the *Biosecurity Act 2015* (the Act) provides that during a human biosecurity emergency period the Health Minister may determine any requirement that he or she is satisfied is necessary:

- to prevent or control the entry, emergence, establishment or spread of a listed human disease in Australian territory;
- to prevent or control the spread of the listed human disease to another country; or
- to give effect to a recommendation made to the Health Minister by the World Health Organization (WHO) under Part III of the International Health Regulations.

On 18 March 2020 the Governor-General declared that a human biosecurity emergency exists regarding the listed human disease ‘Human coronavirus with pandemic potential’ (COVID-19) (section 475 of the Act, *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*).

Purpose

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Amendment (No. 1) Determination 2020* (the Amendment Determination) amends the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* (the Determination) to:

- make a technical amendment to put beyond doubt that there is a requirement imposed on the operator of an aircraft or vessel to ensure that the aircraft or vessel does not leave Australian territory with an Australian citizen or permanent resident on board;
- expand the decision-making authority to grant exemptions; and,
- make other minor technical amendments to remove reference to the commencement date of the Determination and to clarify that only an Act can declare an instrument not to be a legislative instrument.

The Amendment Determination commences the day after registration. The Amendment Determination is automatically repealed after its commencement under section 48A of the *Legislation Act 2003* as it is incorporated into the Determination itself.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.

The Minister for Health is satisfied that the amendments are necessary to continue to prevent or control the entry, emergence, establishment or spread of COVID-19 into Australian territory or part of Australian territory and that they will improve the operational effectiveness of the current Determination.

The Determination is drafted to avoid infringing 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.

Background

On 5 January 2020, the WHO notified Member States under the *International Health Regulations (2005)* of an outbreak of pneumonia of unknown cause in Wuhan city, China. 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 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, 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 WHO to the disease caused by SARS-CoV-2 is Coronavirus disease 2019 (COVID-19).

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) 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.

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*.

Consultation

Consultation occurred with the Department of Home Affairs.

A provision-by-provision description of the amendments is contained in the Attachment.

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

Part 1 - Preliminary

1 Name

Section 1 provides that the instrument is the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Amendment (No. 1) Determination 2020*.

2 Commencement

Section 2 provides that the instrument commences the day after the instrument 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

1 Section 4

Item 1 inserts a definition of ‘Australian Border Force Commissioner’ in section 4 and provides that it has the same meaning as in the *Australian Border Force Act 2015*. Item 1 also inserts a definition of ‘Australian Border Force employee’ and provides that it means an APS employee:

- (a) in the Department administered by the Minister administering the *Australian Border Force Act 2015*; and
- (b) who is in the Australian Border Force or whose services are made available to the Australian Border Force.

Item 1 is included to define the persons who can grant exemptions under section 7.

2 Section 5 (heading)

Item 2 omits “after 12pm, 25 March 2020” from the heading in section 5.

This is a minor technical amendment to remove reference to the commencement date of the Determination.

3 Subsection 5(1)

Item 3 omits “on or after the time this instrument commences” from subsection 5(1).

This is a minor technical amendment which was necessary following the removal of the commencement date of the Determination.

4 Paragraph 5(1)(b)

Item 4 omits “by an APS employee in the Australian Border Force” in paragraph 5(1)(b).

Item 4 has been included to reflect the amendments made to those who can grant exemptions under section 7.

5 Subsection 5(2)

Item 5 inserts after “must” in subsection 5(2), “ensure that the aircraft or vessel does”.

Item 5 is a technical amendment to put beyond doubt that there is a requirement imposed on the operator of an aircraft or vessel to ensure that the aircraft or vessel does not leave Australian territory with an Australian citizen or permanent resident (the *person*) on board unless an exemption applies to the person.

6 Subsection 5(2)

Item 6 omits “on or after the time this instrument commences” in subsection 5(2).

This is a minor technical amendment which was necessary following the removal of the commencement date of the Determination.

7 Paragraph 5(2)(b)

Item 7 omits “by an APS employee in the Australian Border Force” in paragraph 5(2)(b).

Item 7 has been included to reflect the amendments made to those who can grant exemptions under section 7.

8 Section 7 (heading)

Item 8 repeals the heading in section 7 and substitutes:

“7 Exemptions – exceptional circumstances”.

9 Subsection 7(1)

Item 9 omits “an APS employee in the Australian Border Force” from subsection 7(1) and substitutes “the Australian Border Force Commissioner or an Australian Border Force employee”. Item 9 expands the decision-making authority in section 7 to grant exemptions to the Australian Border Force Commissioner or an Australian Border Force employee.

APS employees in the Department of Home Affairs will be providing their services to the Australian Border Force for the purposes of the Determination when, after having completed relevant decision-making training, they are allocated, for their decision, requests made for the granting of an exemption under section 7.

10 Subsection 7(4)

Item 10 repeals subsection 7(4).

Item 10 repeals subsection 7(4) as only an Act can declare an instrument not to be a legislative instrument. Removing subsection 7(4) does not affect the character of the exemptions contained in section 7.