

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity Legislation (Human Coronavirus with Pandemic Potential) Amendment (No.1) Determination 2021

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

- to prevent or control the entry into, or the emergence, establishment or spread of a listed human disease into Australian territory or a part of 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 in relation to the listed human disease.

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).

Section 44 of the Act provides that the Health Minister may determine one or more requirements for individuals who are entering Australian territory at a landing place or port, for the purpose of preventing a listed human disease from entering, or establishing itself or spreading in, Australian territory or a part of Australian territory.

Purpose

The *Biosecurity Legislation (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021* (the Amendment Determination) amends the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* (the Overseas Travel Ban Determination) to provide that where a person has spent the previous 14 days only in either or both Australia and New Zealand, they are exempt from the travel ban if they intend to travel directly to New Zealand only and then return to Australia; or they travel directly to New Zealand and do not intend to return to Australia. The effect of these provisions is to clarify that the general exemption to the travel ban for travel to New Zealand will not apply where a person intends to onward travel from New Zealand to another foreign country.

Advice from the Director of Human Biosecurity (who is also the Commonwealth Chief Medical Officer) indicates that amending the Determination to enable Australian citizens and permanent residents who have been in Australia and/or New Zealand for the preceding 14 days to travel to New Zealand reflects the latest health advice that there is a low likelihood of COVID-19 case arriving in Australia via a person travelling quarantine-free, to and from New Zealand, within a 14 day period, in accordance with a green zone flight system.

The advice also indicates that COVID-19 continues to represent a severe and immediate threat to human health in Australia and internationally even though Australia and New Zealand continue to be considered low COVID-19 risk countries. Increasing the number of Australians overseas in countries that are not low risk and who are wishing to return home increases the number of people entering quarantine, which increases the likelihood of new cases being identified in quarantine facilities, and the potential risk of those cases leaching

into the Australian community causing localised outbreaks and transmission. Reducing the number of people entering quarantine to manageable levels controls the risk of community cases, and protects the capacity of local health systems to respond to any cases that are identified.

This amendment provides clarity that the general exemption to the travel ban for New Zealand is to be used between the safe travel zone between Australian and New Zealand, and not for onward travel from New Zealand to foreign countries. By making it clear that the exemption to travel outside of Australia to New Zealand only applies to travel to New Zealand, the amendment is designed to reduce the risk of the spread of COVID-19 into Australian territory that would be associated with an increase in travel to higher risk third countries and then a return of those travellers to Australia.

The Minister for Health is satisfied that the Determination, as amended by the Amendment Determination, is necessary to continue to prevent or control the further entry into, or the emergence, establishment or spread of COVID-19 into Australian territory or a part of Australian territory. The Minister for Health is also satisfied that the requirements in the Determination are likely to be effective in, or contribute to achieving the purpose, that the requirements are appropriate and adapted to achieve the purpose, that the requirements and the manner in which they are to be applied is no more restrictive or intrusive than what is required in the circumstances and that the period during which the requirements are to apply is only as long as necessary.

The Amendment Determination also amends the *Biosecurity (Entry Requirements – Human Coronavirus with Pandemic Potential) Determination 2020* (Entry Requirements). The first provision requires an individual to provide a declaration where they have entered Australia from New Zealand that they have been only in either or both of New Zealand and Australia for at least 14 days immediately before the day the flight commenced. The effect of this provision is to enable frequent travellers to comply with the entry requirement. The second provision applies where a person travelled to New Zealand in accordance with the exemption for New Zealand travel provided for in the Overseas Travel Ban Determination, and then travelled to another foreign country. The effect of this provision is to require a person to declare that they travelled to the foreign country for a compassionate reason or urgent medical treatment that was not reasonably available in New Zealand or Australia.

The amended Entry Requirements reflect the health advice of the Director of Human Biosecurity that a declaration from individuals who have travelled to a third country outside the safe travel zone aligns with the purpose of preventing COVID-19 from being introduced to, establishing and spreading in Australian territory. It is designed to reinforce the current public health advice that Australian citizens and permanent residents should only be using the New Zealand safe travel zone exemption to travel to New Zealand unless they have a compassionate reason, or required urgent medical treatment not reasonably available in New Zealand or Australia, that required the person to travel to a third country.

Compassionate reasons may include the death or serious illness of a close family member of the individual or of a close family member of the spouse or de facto partner of the individual. The intention of including a compassionate reason is to provide for circumstances that could not have been known to the individual prior to their departure from Australia to travel to New Zealand.

On this basis, the Minister for Health is satisfied that the Entry Requirements, as amended by the Amendment Determination, are for the purpose of preventing COVID-19 from entering, establishing itself or spreading in, Australian territory or a part of Australian territory.

The Amendment Determination commences 19 April 2021. The Amendment Determination is automatically repealed after its commencement under section 48A of the *Legislation Act 2003* as it is incorporated into the Determination and the Entry Requirements 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 WHO notified Member States under the *International Health Regulations (2005)* (IHR) 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.

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 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 (subsection 477(2)). 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.

Entry requirements

Australia is a signatory to the WHO IHR. Annex 1B of the IHR requires Member States to have the capacity to apply entry and exit requirements for arriving and departing travellers in response to public health risks and emergencies of international concern.

An entry requirement made under section 44 is a non-disallowable instrument (subsection 44(3)).

The Entry Requirements provide for individuals who are arriving in Australia from New Zealand to provide contact information for the purposes of contact tracing, and to make a declaration as to their travel history in the 14 days before arrival. The Entry Requirements, as amended, manage the low risk that individuals who have been in New Zealand and/or Australia for the previous 14 days may be incubating COVID-19 and are aligned with the purpose of preventing the establishment and spread of COVID-19 within Australian territory. They also require a declaration from travellers who left Australia via travel to New Zealand under the general exemption in subsection 6(2) or 6(3) and subsequently left New Zealand to travel to another foreign country.

The Entry Requirements apply only to a specified group of people, that is, people who are arriving in Australia directly from New Zealand and who are not subject to mandatory hotel quarantine, to ensure that the requirement is no more intrusive than is required in the circumstances.

Personal information that is collected as a result of these requirements will be managed in accordance with relevant Australian privacy laws.

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

**Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No.1)
Determination 2021**

Part 1 - Preliminary

1 Name

Section 1 provides that the instrument is the *Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021*.

2 Commencement

Section 2 provides that the instrument commences 19 April 2021.

3 Authority

Section 3 provides that the instrument is made under subsections 44(2) and 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

Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2020

1 Section 4

Item 1 inserts a term in the definition section of the instrument. Item 1 provides that ‘Overseas Travel Ban Determination’ means the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020*, as in force on 19 April 2021.

2 Section 5 (heading)

Item 2 repeals the heading and substitutes with a new heading. The new heading clarifies that the requirements in section 5 to provide a statement relate to certain persons entering Australian territory from New Zealand.

3 Paragraphs 5(1)(b) and (2)(a)

Item 3 omits “only in New Zealand”, and substitutes “only in either or both New Zealand and Australia”. The effect of the amendment is to require a person who is entering Australian territory and has been only in either or both New Zealand and Australia for at least 14 days immediately before the day the flight commenced to provide a written statement, and for the written statement to include a declaration that the individual has been only in either or both New Zealand and Australia for the past 14 days. This amendment provides for short stay travel between the two countries.

4 Subparagraph 5(2)(b)(ix)

Item 4 omits “number;” and substitutes “number.”

5 Subparagraph 5(2)(b)(x)

Item 5 repeals the subparagraph.

6 At the end of the instrument

Item 6 adds a new provision that requires certain returning Australian citizens and permanent residents to provide a declaration. The requirement applies to an individual:

- to whom section 5 does not apply;
- who is an Australian citizen or permanent resident;
- who is entering Australian territory at a landing place or port; and
- who most recently left Australian territory to travel to New Zealand in the following circumstances:
 - an exemption set out in subsection 6(2) or (3) of that Determination applied to the individual;
 - no other exemption section set out in section 6, or granted under section 7, of that Determination applied to the individual; and
- who after so travelling, left New Zealand to travel to another foreign country.

Paragraph 6(2)(b) outlines details of the information that must be contained in the declaration, which include personal contact and identification details, and information relevant to establishing the COVID-19 risk posed by the individual. The individual must provide to a relevant official a written statement of the individual’s travel history and contact details, including that if they did travel to another foreign country after travelling to New Zealand under the exemption set out in subsection 6(2) or (3), this was for a compassionate reason or because the individual required urgent medical treatment that was not reasonably available in New Zealand or Australia.

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020

7 Section 6

Item 5 inserts “An” before (1) to provide for the additional requirements being inserted into the Determination.

8 Paragraph 6(e)

Item 6 makes a typographical amendment to provide for the additional paragraphs being inserted into the Determination.

9 Paragraph 6(f)

Item 7 repeals paragraph 6(f).

10 At the end of section 6

Item 8 makes it clear that the provisions provide an exemption from the requirements of section 5 (persons not to travel outside Australian territory) to a person who is travelling directly to New Zealand and has been only in either or both of Australia and New Zealand for at least 14 days immediately before the day the flight or voyage of the outgoing aircraft or vessel commences.

In addition, subsection 6(2) provides that an exemption is provided for a person who intends to travel from New Zealand only to return to Australia – meaning that the general exemption permitting travel to New Zealand will not permit a person to leave Australia where a person intends to onward travel from New Zealand to another country. Subsection 6(3) provides for an exemption for a person who travels to New Zealand and does not intend to return to Australia.