

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Repeal Determination 2021

Purpose

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements – Retail Outlets at International Airports) Repeal Determination 2021* (the **Repeal Determination**) repeals the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Determination 2020* (the **Determination**).

The repeal of the Determination removes restrictions on operators of designated retail outlets to permit them to trade. Designated retail outlets are retail outlets in an international area of a designated international airport, such as the international terminal of an airport. Designated international airports include (but are not limited to) Adelaide Airport, Brisbane Airport, Canberra Airport, Darwin International Airport, Melbourne (Tullamarine Airport), Perth Airport and Sydney (Kingsford-Smith) Airport.

The Health Minister, on advice from the Commonwealth Chief Medical Officer, is no longer satisfied that the Determination is appropriate or proportionate to the risk COVID-19 is presenting to retail outlets and the wider Australian community. That is, these restrictions on designated retail outlets are no longer necessary to prevent or control the entry, emergence, establishment or spread of COVID-19 in Australia, in the light of rising national COVID-19 vaccination rates, and in line with the easing of restrictions in accordance with public health advice.

Retail outlets in designated international airports will still be subject to any relevant state and territory public health and safety measures which may include the wearing of masks and social distancing. States and territories may decide to implement public health measures under jurisdiction-specific emergency legislation to restrict trade at such retail outlets as a result of the repeal of the Determination.

The Repeal Determination is a legislative instrument for the purposes of the *Legislation Act 2003*. The Repeal Determination is automatically repealed after its commencement under section 48A of the *Legislation Act 2003*.

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. On 21 January 2020 ‘human coronavirus with pandemic potential’ became a ‘listed human disease’ under section 42 of the *Biosecurity Act* (see the *Biosecurity (Listed Human Diseases) Determination 2016*).

On 30 January 2020, the outbreak was declared by the WHO 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.

Authority

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (the Declaration) has been made by the Governor-General pursuant to section 475 of the *Biosecurity Act 2015* (Biosecurity 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 declared by the Declaration is currently in force until 17 December 2021 (unless extended).

During a human biosecurity emergency period, the Health Minister may, in accordance with section 477 of the Act, determine emergency requirements that they are satisfied are necessary to prevent or control the entry into, or the emergence, establishment or spread of the declaration listed human disease, COVID-19, in Australian territory. A person who fails to comply with a requirement may commit a criminal offence (punishable by imprisonment for a maximum of 5 years, or 300 penalty units, or both, see section 479 of the Act).

The Repeal Determination is made under subsection 477(1) of the Act.

Subsection 477(2) of the Biosecurity Act provides that a determination made under subsection 477(1) is a legislative instrument, but section 42 (disallowance) of the Legislation Act does not apply to the determination. This is because the potential risk of such disallowance would inhibit the Commonwealth’s ability to act on public health advice to manage a human biosecurity risk as it would create uncertainty as to whether the instrument might be disallowed. In the case of the Repeal Determination, the potential risk of disallowance may also create uncertainty for operators of retail outlets regarding whether they would be permitted to trade.

Reliance on subsection 33(3) of the *Acts Interpretation Act 1901*

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power is construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Commencement

The Repeal Determination will commence immediately after it is registered on the Federal Register of Legislation.

Consultation

The Department of Infrastructure, Transport, Regional Development and Communications, the Department of Agriculture, Water and the Environment, and the Department of Home Affairs including the Australian Border Force were consulted on the repeal of the Determination. The states and territories were also consulted through the Australian Health Protection Principal Committee.

Details of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Repeal Determination 2021*

Section 1 provides that the name of the instrument is the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Repeal Determination 2021*.

Section 2 provides that the Repeal Determination commences immediately after it is registered on the Federal Register of Legislation.

Section 3 states that the authority for making the Repeal Determination is subsection 477(1) of the *Biosecurity Act 2015*.

Section 4 provides that each instrument that is specified in the Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule has effect according to its terms.

Schedule 1 – Repeals

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Determination 2020

Item 1

Item 1 repeals the whole of the Determination. Repealing the Determination will mean that all designated retail outlets in an international area of a designated international airport in Australia will be able to trade (noting that they would still be subject to any relevant state and territory public health and safety measures).