

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Health and Aged Care

Biosecurity Act 2015

***Biosecurity (Emergency Requirements—Remote Communities) Amendment (No.1)
Determination 2021***

Purpose

The *Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 1) Determination 2021* (Amendment Determination) amends the *Biosecurity (Emergency Requirements—Remote Communities) Determination 2021* (Determination) to extend its operation by 4 days.

The Determination made requirements (referred to as remote communities' requirements) to prevent or control the entry or spread of the listed human disease 'human coronavirus with pandemic potential' (COVID-19) in parts of Australian territory defined as designated areas. The designated areas are described in Schedule 1 to the Determination and are located in the Northern Territory.

The remote communities' requirements prevent a person from entering a designated area unless they meet the criteria set out in section 5 of the Determination. The remote communities' requirements also prevent a person from leaving a designated area unless they meet the criteria set out in section 7 of the Determination.

The Director of Human Biosecurity (who is also the Commonwealth Chief Medical Officer) has advised the Health Minister, and the Health Minister is satisfied, that these requirements are necessary to prevent or control the entry, emergence, establishment or spread of COVID-19 in the designated areas, and in Australian territory more broadly.

The Director of Human Biosecurity has advised the Health Minister, and the Health Minister is satisfied, that these requirements:

- are likely to be effective in, or contribute to, achieving its purpose;
- are appropriate and adapted to its purpose;
- are no more restrictive or intrusive than required in the circumstances, including the manner in which the requirement is to be applied.

The Director of Human Biosecurity has advised the Health Minister, and the Health Minister is satisfied, that it is necessary for the requirements to be in force for the same duration as the relevant Northern Territory public health order, which is the *COVID-19 Directions (No. 86) 2021* (NT). That order was amended by the *COVID-19 Directions (No. 91) 2021* (NT) to remain in force until 6.00 pm on 22 November 2021 by legal time in the Northern Territory (rather than expire on 6.00 pm on 18 November 2021).

The Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

Authority

During a human biosecurity emergency period, the Health Minister may, in accordance with section 477 of the *Biosecurity Act 2015* (Biosecurity Act), determine emergency requirements that they are satisfied are necessary to prevent or control the entry, emergence, establishment or spread of the declaration listed human disease COVID-19 in Australian territory or a part of Australian territory.

Subsection 477(1) of the Biosecurity 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 of the declaration listed human disease into Australian territory or a part of Australian territory, or the emergence, establishment or spread of the declaration listed human disease in Australian territory or a part of Australian territory; or
- Prevent or control the spread of the declaration listed human disease to another country; or
- Give effect to a recommendation that has been made to the Health Minister by the World Health Organization under Part III of the International Health Regulations in relation to the declaration listed human disease.

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. The risk of such disallowance would inhibit the Commonwealth's ability to act urgently on public health advice to manage a human biosecurity risk that could threaten or harm human health as it would create uncertainty as to whether the instrument might be disallowed. In the circumstances of the Determination, as amended, this is particularly so because remote communities are made up of Aboriginal and Torres Strait Islander peoples who are at a high risk of adverse human health outcomes as a result of exposure to a listed human disease.

These emergency requirements may override any Commonwealth, state or territory law (subsection 477(5) of the Biosecurity Act). Biosecurity measures under a human biosecurity control order may continue to be imposed on an individual basis (subsection 477(6) of the Biosecurity Act).

The Australian Government has established protocols for the exercise of emergency powers under the Biosecurity Act to ensure that these powers are only used where necessary to protect the health of Australians, based on expert advice and following appropriate consultation.

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.

On 18 March 2020, the Governor-General declared that a human biosecurity emergency exists regarding the listed human disease ‘human coronavirus with pandemic potential’ (section 475 of the Biosecurity Act, *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*). The human biosecurity emergency period is currently in force until 17 December 2021 (unless extended).

COVID-19 has entered Australia and 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 to disrupt the Australian community socially and economically.

On 15 November 2021 the Northern Territory Government announced that the Municipality of Katherine including Tindal and Robinson River including the surrounding homelands will enter into a lockdown following two positive cases of COVID-19. One of these cases resides in the Robinson River Community, which is a remote community approximately 10 hours’ drive from Katherine. Public health measures have been put in place by the Northern Territory Government to limit the spread of COVID-19 across the Northern Territory. The Determination puts in place emergency requirements to restrict a person’s ability to enter into and leave from a designated area to support the Northern Territory public health measures.

Commencement

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

Consultation

The remote communities’ requirements have been developed with Indigenous stakeholders and the Northern Territory Government. The content of the Determination was discussed and agreed with the National Aboriginal and Torres Strait Islander Advisory Group on COVID-19, with extensive engagement with the four Northern Territory Land Councils, and other Indigenous key health stakeholders across the Northern Territory, including relevant Aboriginal Community Controlled Health Organisations. The Northern Land Council has also been consulted and is supportive of the Determination.

The Amendment Determination is supported by the Northern Territory Government.

Details of the *Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No.1) 2021*

Section 1 provides that the name of the instrument is the *Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 1) Determination 2021*.

Section 2 provides that the Amendment Determination commences immediately after it is registered.

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

Section 4 provides that each instrument 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 (Emergency Requirements—Remote Communities) Determination 2021* to be amended.

Item 1 amends section 7 of the Determination to insert “(1)” before “A person who”. This is a technical amendment to correct an omission of the subsection number.

Item 2 amends section 8 of the Determination to omit “18 November 2021” and substitute “22 November 2021”.

As amended, section 8 of the Determination provides that the Determination will be repealed at 6pm on 22 November 2021 by legal time in the Northern Territory. This is intended to align with the cessation of the amended Northern Territory public health measures from that same time and date.

Item 3 amends Clause 1 of Schedule 1 to the Determination to omit the words “Lot 90, Robinson River in NT Portion 3975”, and substitute the words “at the point latitude (DMS) S 16°45’33.33”, longitude (DMS) E 136°58’58.80” (Geocentric Datum of Australia 1994 (GDA94) geographic coordinates)”. This is a technical amendment to provide a geographic co-ordinate point for the Robinson River major community [258] also known as Mungoorbada. This amendment has been made to align with the format of identifying Robinson River homeland areas for the purposes of the definition of ‘designated areas’, as seen in Clause 2 of Schedule 1 to the Determination.