

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Emergency Requirements—High Risk Country Travel Pause) Determination (No. 2) 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 in 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).

Purpose

The *Biosecurity (Emergency Requirements—High Risk Country Travel Pause) Determination (No. 2) 2021* (the Determination) requires passengers on a relevant international flight not to enter Australian territory at a landing place if the person has been in an Omicron high risk country (Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, Seychelles, South Africa and Zimbabwe) within 14 days of the day the flight was scheduled to commence, unless an exemption set out in section 7 applies to the person.

The Determination to temporarily restrict entry to Australia for people who have been in an Omicron high risk country in the last 14 days reflects the latest health advice that there is a high likelihood of Omicron (new COVID-19 variant detected) cases arriving in Australia via a person travelling from an Omicron high risk country, or who has been in an Omicron high risk country in the last 14 days.

Omicron high risk countries have been identified as a high risk countries due to the Omicron variant making a rapid escalation to be the dominant variant detected in South Africa and scattered spread to several countries outside of Africa. The Determination protects the already limited quarantine system from becoming overwhelmed with cases of Omicron by those entering Australia and prevent and control the entry, and the emergence, establishment or spread of Omicron into Australian territory or a part of Australian territory. The measures maintain the integrity of Australia’s quarantine system and allow the system to recover capacity, which is a critical intervention in preventing and managing the spread of Omicron.

The Determination remains in force until the start of 12 December 2021, unless it is revoked earlier.

On the basis of the above, the Minister for Health is satisfied that the Determination is necessary to prevent or control the further entry into, or the emergence, establishment or spread of Omicron into Australian territory or a part of Australian territory.

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 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.

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

Biosecurity (Emergency Requirements—High Risk Country Travel Pause) Determination (No. 2) 2021

Part 1 - Preliminary

1 Name

Section 1 provides that the instrument is the *Biosecurity (Emergency Requirements—High Risk Country Travel Pause) Determination (No. 2) 2021*.

2 Commencement

Section 2 provides that the instrument commences immediately 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 Definitions

Section 4 provides that a number of expressions used in this instrument are defined in the *Biosecurity Act 2015*. Section 4 also provides definitions for a number of terms used in the instrument.

5 Repeal

Section 5 provides that this instrument is repealed at the start of 12 December 2021.

Part 2 – Requirements

6 Requirements not to enter Australian territory

Section 6 provides that a person who is a passenger on a relevant international flight must not enter Australian territory at a landing place if the person has been in an Omicron high risk country within 14 days before the day the flight was scheduled to commence, unless an exemption set out in section 7 applies to the person.

7 Exemptions – general

Section 7 provides exemptions from the requirements not to enter Australian territory for: a person who is an Australian citizen or permanent resident, a person who is an immediate family member of a person of an Australian citizen or resident, crew of an aircraft or vessel; a worker associated with the safety and maintenance of an aircraft or vessel; a person engaged in the day-to-day conduct of inbound and outbound freight; a person travelling on official government business and Australian official or diplomatic passport or their immediate family; a diplomatic, consular or other foreign official accredited to Australia or their immediate family holding a Subclass 995 (Diplomatic (Temporary)) visa; and a member of an Australia Medical Assistance Team.