

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 4) Instrument 2021

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (the Declaration) was made on 18 March 2020 pursuant to section 475 of the *Biosecurity Act 2015* (the Act), and declares that a human biosecurity emergency exists regarding the listed human disease ‘human coronavirus with pandemic potential’ (COVID-19). COVID-19 is a ‘declaration listed human disease’ for the purposes of the Act.

Section 476 of the Act provides that the Governor-General may vary a human biosecurity emergency declaration to extend the human biosecurity emergency period for a period of up to three months if the Health Minister is satisfied the listed human disease is continuing to pose a severe and immediate threat, or is continuing to cause harm, to human health on a nationally significant scale, and the extension is necessary to prevent or control the entry into, or the emergence, establishment or spread of the listed human disease in Australian territory or a part of Australian territory. The Governor-General may extend a human biosecurity emergency period more than once. On 3 September 2021, the Governor-General extended the human biosecurity emergency period for a further three months to 17 December 2021.

The Minister for Health and Aged Care is satisfied, as required by subsection 476(1) of the Act, that COVID-19 is continuing to pose a severe and immediate threat to human health on a nationally significant scale, and the extension of the human biosecurity emergency period is necessary to prevent or control the entry into, or the emergence, establishment or spread of COVID-19 in Australian territory.

Purpose

The purpose of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 4) Instrument 2021* (the Instrument) is to vary the Declaration to extend the human biosecurity emergency period for a further two months until 17 February 2022.

The Act provides that the Director of Human Biosecurity is the person who occupies or is acting in, the position of Commonwealth Chief Medical Officer in the Commonwealth Department of Health (subsection 544(1)). The Director of Human Biosecurity has advised the Minister for Health and Aged Care, and the Minister is satisfied, that the human biosecurity emergency period should be extended for a further two months, as:

- COVID-19 is continuing to pose a severe and immediate threat to human health on a nationally significant scale; and
- the extension of the human biosecurity emergency period is necessary to prevent or control the:
 - entry of COVID-19 into Australian territory or a part of Australian territory; or
 - emergence, establishment or spread of COVID-19 in Australian territory or a part of Australian territory.

In accordance with sections 477 and 478 of the Act, during a human biosecurity emergency period the Health Minister may determine emergency requirements, or give directions, that the Minister is satisfied are necessary to prevent or control the entry into, or the emergence, establishment or spread of the listed human disease in Australian territory. A person who fails to comply with a requirement or direction may commit a criminal offence (imprisonment for a maximum of 5 years, or 300 penalty units, or both).

The extension of the human biosecurity period is necessary to ensure that the Minister for Health and Aged Care can continue to exercise the emergency powers under the Act to determine requirements or give directions necessary to prevent or control the entry, emergence, establishment or spread of COVID-19 in Australian territory.

The Instrument commences the day after it is registered on the Federal Register of Legislation. The Instrument amends the Declaration so that the Declaration, and the human biosecurity emergency period, finishes at the end of 17 February 2022.

Subsection 476(2) of the Act provides that a variation made under subsection 476(1) is a legislative instrument, but also provides that section 42 (disallowance) of the *Legislation Act 2003* does not apply to the variation.

The Act provides for the Instrument to be non-disallowable to ensure that the Australian Government is able to take the urgent action necessary to manage a nationally significant threat or harm to Australia's human health. The risk of such disallowance would inhibit the Government'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.

Background

On 5 January 2020, the World Health Organization (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, 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, on the recommendation of the Minister for Health, made the Declaration pursuant to section 475 of the Act declaring that a human biosecurity emergency exists in relation to the listed human disease 'human coronavirus with pandemic potential' (COVID-19) and specifying a human biosecurity emergency period.

Emergency requirements and directions

Part 2 of Chapter 8 of the Act provides powers to deal with human biosecurity emergencies of national significance during a human biosecurity emergency period.

This includes the powers conferred on the Health Minister under subsections 477(1) and 478(1) of the Act to determine emergency requirements or issue directions during a human biosecurity emergency period that the Health Minister is satisfied are necessary to prevent or control the entry into, or the emergence, establishment or spread of a declaration listed human disease in Australian territory or a part of Australian territory. The Health Minister's exercise of these powers is subject to further conditions and limitations under the Act.

The requirements that the Health Minister may determine under section 477 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.

The Minister for Health and Aged Care has exercised the power under section 477 to determine various emergency requirements during the human biosecurity emergency period for COVID-19. An effect of extending the human biosecurity emergency period is that those determinations that are still in effect will, according to their terms and consistent with subsection 477(7) of the Act, continue to apply for the further duration of the period.

The directions that the Health Minister may give under section 478 include, but are not limited to: a direction to a person who is in a position to close premises, or prevent access to premises, to do so; a direction for the purpose of giving effect to or enforcing an emergency requirement determined under section 477; and directions to give effect to a recommendation made to the Health Minister by the WHO under Part III of the IHR.

Consultation

The Instrument is supported by the Director of Human Biosecurity (the Commonwealth Chief Medical Officer) and the Director of Biosecurity (the Secretary of the Department of Agriculture, Water and the Environment).

A provision by provision description of the Instrument is contained in the Attachment.

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 4) Instrument 2021

1 Name

Section 1 provides for the Instrument to be referred to as the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 4) Instrument 2021*.

2 Commencement

Section 2 provides that the Instrument commences the day after it is registered.

3 Authority

Section 3 provides that the Instrument is made under subsection 476(1) of the *Biosecurity Act 2015*.

4 Schedules

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 Extension of human biosecurity emergency period

This Schedule provides for the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (the Declaration) to be amended.

Item 1 Paragraph 7(b)

This item amends paragraph 7(b) of the Declaration to omit “17 December 2021” and substitute “17 February 2022”.

As amended, section 7 of the Declaration provides that the Declaration is in force from the commencement of the Declaration to its end on 17 February 2022. As a result, the human biosecurity emergency period under the Declaration will also finish at the end of 17 February 2022.