

## **EXPLANATORY STATEMENT**

### ***Biosecurity Act 2015***

#### ***Biosecurity (Emergency Requirements – High Risk Country Travel Pause) Amendment Determination (No. 1) 2021***

#### **Purpose**

The *Biosecurity (Emergency Requirements – High Risk Country Travel Pause) Amendment Determination (No. 1) 2021* (Amendment Determination) amends the *Biosecurity (Emergency Requirements—High Risk Country Travel Pause) Determination (No. 2) 2021* (High Risk Country Travel Pause Determination) to extend the operation of that instrument until 15 December 2021.

The High Risk Country Travel Pause 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, 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 Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

#### **Authority**

##### High Risk Country Travel Pause Determination

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 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.

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 World Health Organisation (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 February 2022 (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 27 November 2021, the WHO announced a new COVID-19 variant of concern: B.1.1.529 ('Omicron'). Public health measures have been put in place in Australia and around the world to address this new variant of concern.

## **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 shall be 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**

Schedule 1 of the Amendment Determination commences immediately after the instrument is registered.

## **Consultation**

The Department of Health has consulted with the Australian Border Force, the Department of Foreign Affairs and Trade, the Department of Home Affairs, the Department of Industry, Science, Energy and Resources and the Department of the Prime Minister and Cabinet.

## **Attachment**

A provision by provision description of the Amendment Determination is set out in the Attachment.

## ATTACHMENT

### **Details of the Biosecurity (Emergency Requirements – High Risk Country Travel Pause) Amendment Determination (No. 1) 2021**

**Section 1** provides that the name of the instrument is the *Biosecurity (Emergency Requirements – High Risk Country Travel Pause) Amendment Determination (No. 1) 2021*.

**Section 2** provides that Schedule 1 commences immediately after the instrument is registered.

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

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

#### **Schedule 1—Amendments commencing immediately after registration**

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

###### **Item 1**

Item 1 substitutes ‘12 December’ with ‘15 December’, so that the instrument ceases at the start of 15 December, rather than the start of 12 December 2021.