

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2021

Purpose

The *Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2021* (the “Determination”) replicates the requirements contained in *Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2021* (which was repealed at 5pm Northern Territory time, 22 December 2021), commencing immediately after registration and will be in force until 5pm Northern Territory time, 23 December 2021.

The Determination makes certain requirements relating to remote communities to prevent or control the entry or spread of the listed human disease ‘human coronavirus with pandemic potential’ (COVID-19) into 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 Determination prevents 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 is 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 \(No. 133\) 2021: Directions to lock down Ali Curung, Imangara, Imperrenth, Double D, Junkaji and Wakurlpu](#).

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

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 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.

Public health measures have been put in place by the Northern Territory Government to limit the spread of COVID-19 across the Northern Territory. On 19 December 2021, the Northern Territory Government announced that the Locality of Ali Curung, Junkaj Homeland and the Wakurlpu Homeland would enter into a lockdown following a positive case of COVID-19 (see [COVID-19 Directions \(No. 133\) 2021: Directions to lock down Ali Curung, Imangara, Imperrenth, Double D, Junkaji and Wakurlpu](#)). The Determination has put 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.

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

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

Consultation

The Department has consulted with the Northern Territory Government, the Central Land Council, National Aboriginal Community Controlled Health Organisations, the Aboriginal Medical Services Alliance Northern Territory, the National Indigenous Australians Agency and the Department of Prime Minister and Cabinet.

Details of the *Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2021*

Section 1 provides that the name of the instrument is the *Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2021*

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

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

Section 4 sets out the definitions used in the Determination. A number of expressions used in the Determination are defined in the Biosecurity Act, including:

- Australian law;
- Australian territory;
- conveyance;
- exposed to; and
- Health Department.

This section also defines the following terms for the purposes of the Determination:

- Commercial primary production;
- Designated area;
- Essential activity;
- Mining operations;
- NT Land Rights Act, which means the *Aboriginal Land Rights (Northern Territory) Act 1976*;
- Permitted activity; and
- Relevant decision-maker.

The term ‘essential activity’ includes a range of activities that are considered necessary in designated areas. These essential activities include, but are not limited to:

- providing education, health care, child care, disability care and aged care;
- providing services relating to the prevention of, or recovery from, domestic violence, policing and emergency services, and child protection services;
- providing essential services of a kind typically provided by local government, such as rubbish collection;
- providing services, benefits, programs or facilities that the Chief Executive Centrelink has the function of providing;
- providing correctional services in relation to one or more persons in the area;
- providing funerary services;
- operating, maintaining, repairing or replacing equipment for providing electricity, gas, water, medical services, telecommunications services or broadcasting services or other essential infrastructure in the area (such as an airport);
- providing or delivering food, fuel or household or medical supplies in the area;

- providing postal services or delivering mail in the area;
- transporting freight to or from a place in the area.

The term ‘permitted activity’ outlines activities that individuals may enter or leave the designated area for, provided that these activities cannot be reasonably undertaken outside or inside that area (as the case may be). Permitted activities include, but are not limited to:

- obtaining medical care (including vaccination or testing for human coronavirus with pandemic potential) or medical supplies;
- isolating because the person is, or may be, infected with human coronavirus with pandemic potential;
- obtaining food, fuel or mail;
- for a person who is engaged in an essential activity that can be undertaken from the person’s premises of residence—visiting the person’s workplace to retrieve a computer or work materials;
- for a person who is engaged in an essential activity, and who is the parent or guardian of a child—obtaining any of the following for the child, as appropriate:
 - child care;
 - early childhood education;
 - education in a primary or secondary school;
- for a person who is the parent or guardian of a child—taking the child to another parent or guardian of the child, whether or not there is a formal arrangement in place in relation to the person or persons with whom the child lives or spends time with;
- providing care or support to a family member or another person who is unable to care for themselves due to health, age or disability;
- providing care to an animal that is unattended;
- obtaining goods or services from a person who is engaged in an essential activity that is, or includes, the provision of the goods or services;
- an activity relating to the administration of justice, including attending a police station or a court or other premises for a purpose relating to the justice or law enforcement system;
- travelling directly to an airport to leave the Northern Territory;
- attending a funeral at which there are no more than 10 other attendees in total, not including the persons providing the funeral services;
- an activity that the person is required or authorised to undertake by a law of the Commonwealth or the Northern Territory.

The term ‘relevant decision-maker’ means a person occupying an office, appointment or position, of a Territory or other body, described, for the area, in the table in Schedule 2. A ‘relevant decision-maker’ also means a human biosecurity officer who is an officer or employee of the Health Department, acting after having regard to the advice of a person who is a relevant decision-maker for the area as described in the table in Schedule 2.

Subsection 4(2) of the Determination provides that a reference in a provision of this instrument to a particular law of the Northern Territory is a reference to that law as in force immediately before the commencement of that provision.

Part 2—Requirements

A note under the heading Part 2—Requirements provides that a person who fails to comply with a requirement that applies to the person under this instrument may commit an offence (see section 479 of the Biosecurity Act). The note highlights that generally available defences to offences are found in Part 2.3 of the *Criminal Code* (see the Schedule to the *Criminal Code Act 1995*).

Section 5 sets out that persons must not enter designated areas unless they enter in accordance with the requirements of this section.

Subsection 5(1) provides that a person must remain outside a designated area unless:

- the person is entering the area to escape an immediate threat to the person’s life or a risk of harm, including harm relating to domestic violence; or
- the person is a member of the Australian Defence Force and is entering the area in the course of the member’s duty; or
- the person is one of the following officials, and is entering the area in the course of the person’s duty as such an official:
 - the Director of Human Biosecurity;
 - the chief human biosecurity officer for the Northern Territory;
 - a human biosecurity officer;
 - a biosecurity official;
 - an official performing functions under an Australian law relating to public health, biosecurity or requirements for the export of food or agricultural commodities; or
- because of an amendment of the description of the designated area in Schedule 1, the person ceases to remain outside the area on the commencement of the amendment; or
- all of the following apply to the person entering the area:
 - immediately before the entry, the person does not have any of the signs or symptoms of human coronavirus with pandemic potential;
 - in the 14 days immediately before the entry, the person has not been exposed, without adequate personal protective precautions, to human coronavirus with pandemic potential;
 - in the 14 days immediately before the entry, the person has not been in a foreign country;
 - the person is not entering the area wholly or partly for the purpose of engaging in an activity in the area that is prohibited by or under an Australian law;
 - the person’s entry to the area is not prohibited by or under an Australian law (other than this section);
 - at least one of subsections 5(2), (3), (4) and (5), (6) and (7) applies to the person.

Subsection 5(2) provides, subject to the requirements in paragraph 5(1)(e), that a person may enter the designated area to engage in, or provide transport for, an essential activity. Subsection 5(2) of the Determination will apply to a person entering a designated area if the person is entering the area primarily to engage in an essential activity in the area that requires the person to be in the area. It will also apply to a

person who is in charge of, or a member of the crew of, a conveyance entering the area primarily to transport one or more persons who are entering the area primarily to engage in an essential activity in the area that requires the person to be in the area.

If a person meets one of the two requirements described above, they must also meet one of the following requirements for subsection 5(2) to apply:

- there is an urgent need for the person to engage in the essential activity in the area or to be in charge of, or be a member of the crew of, the conveyance entering the area; or
- the person is entering the area primarily to engage in the essential activity in a manner that is agreed with a human biosecurity officer so as to minimise the extent to which other persons in the area are exposed to the person engaging in the activity.

Subsection 5(3) provides, subject to the requirements in paragraph 5(1)(e), that a person may enter the designated area if the person is entering the area primarily to engage in a permitted activity, as defined in section 4 of the Determination, in the area that cannot reasonably be undertaken outside the area.

Subsection 5(4) provides, subject to the requirements in paragraph 5(1)(e), that a person may enter the designated area if the person has been given permission to enter the area by a relevant decision-maker (defined in section 4 of the Determination) for the area who is a chief human biosecurity officer or a human biosecurity officer, or who has had regard to any guidance from a human biosecurity officer about who should be allowed to enter the area.

Subsection 5(5) provides, subject to the requirements in paragraph 5(1)(e), that a person may enter the designated area if the person's premises of residence is in the area and the person is entering the area to return to those premises.

Subsection 5(6) provides, subject to the requirements in paragraph 5(1)(e), that a person may enter the designated area if the person, referred to as the entrant in this provision, is entering the designated area on a journey for which all the following conditions are met:

- the journey is to a place beyond the area;
- the journey takes the most direct practicable route through the area;
- the journey does not involve a person in the area (other than a person travelling with the entrant) being exposed to the entrant or a person travelling with the entrant.

Subsection 5(7) provides, subject to the requirements in paragraph 5(1)(e), that a person may enter the designated area if the person, referred to as the entrant in this provision, is entering the designated area (referred to as the end area) on a journey for which all the following conditions are met:

- the journey started in a designated area (the start area) that the entrant did not enter in contravention of subsection 5(1), whether the start area is the same as, or different from, the end area;
- the journey passed through an area that was not a designated area;
- on the journey the entrant was not exposed to a person who did not start the journey with the entrant;

- if the journey involved use of a conveyance, the same conveyance was used for the whole journey.

Section 6 sets out that persons entering designated areas must minimise contact with others in those areas.

Subsection 6(1) provides that section 6 applies to a person who enters a designated area in reliance on paragraphs 5(1)(a), 5(1)(b), 5(1)(c), or subsections 5(2), 5(3), 5(4), 5(5) or 5(7).

Subsection 6(2) provides that the person entering the designated area must take reasonable steps, having regard to the person's circumstances and reason for entering the area, to minimise the extent to which anyone else in the area is exposed to the person.

Section 7 sets out that persons must not leave designated areas unless they leave in accordance with the requirements of this section.

Subsection 7(1) provides that a person who is in a designated area must not leave the area unless:

- the person is leaving the area to escape an immediate threat to the person's life or a risk of harm, including harm relating to domestic violence; or
- the person is a member of the Australian Defence Force and is leaving the area in the course of the member's duty; or
- the person is one of the following officials, and is leaving the area in the course of the person's duty as such an official:
 - the Director of Human Biosecurity;
 - a chief human biosecurity officer for a State or Territory;
 - a human biosecurity officer;
 - a biosecurity official;
 - an official performing functions under an Australian law relating to public health, biosecurity or requirements for the export of food or agricultural commodities; or
- the person entered the area in reliance on section 5, and the person's premises of residence is not in the area, and the person is leaving the area to return to the person's premises of residence; or
- all of the following apply to the person leaving the area:
 - immediately before leaving the area, the person does not have any of the signs or symptoms of human coronavirus with pandemic potential;
 - in the 14 days immediately before leaving the area, the person has not been exposed, without adequate personal protective precautions, to human coronavirus with pandemic potential;
 - in the 14 days immediately before leaving the area, the person has not been in a foreign country;
 - the person is not leaving the area wholly or partly for the purpose of engaging in an activity that is prohibited by or under an Australian law;
 - the person's leaving the area is not prohibited by or under an Australian law (other than this section);
 - at least one of subsections (2), (3) and (4) applies to the person.

Subsection 7(2) provides, subject to the requirements in paragraph 7(1)(e), that a person may leave the designated area to engage in, or provide transport for, an essential activity. Subsection 7(2) of the Determination will apply to a person leaving a designated area if the person is leaving the area primarily to engage in an essential activity in the area that requires the person to be outside the area. It will also apply to a person who is in charge of, or a member of the crew of, a conveyance leaving the area primarily to transport one or more persons who are leaving the area primarily to engage in an essential activity in the area that requires the person to be outside the area.

If a person meets one of the two requirements described above, they must also meet one of the following requirements for subsection 7(2) to apply:

- there is an urgent need for the person to engage in the essential activity outside the area or to be in charge of, or be a member of the crew of, the conveyance leaving the area; or
- the person is leaving the area primarily to engage in the essential activity outside the area in a manner that is agreed with a human biosecurity officer so as to minimise the extent to which other persons outside the area are exposed to the person engaging in the activity.

Subsection 7(3) provides, subject to the requirements in paragraph 7(1)(e), that a person may leave the designated area if the person is leaving the area primarily to engage in a permitted activity, as defined in section 4 of the Determination, outside the area that cannot reasonably be undertaken in the area.

Subsection 7(4) provides, subject to the requirements in paragraph 7(1)(e), that a person may leave the designated area if the person has been given permission to leave the area by a relevant decision-maker (defined in section 4 of the Determination) for the area who is a chief human biosecurity officer or a human biosecurity officer, or who has had regard to any guidance from a human biosecurity officer about who should be allowed to leave the area.

Part 3—Repeal

Section 8 provides that the Determination will be repealed at 5pm on 23 December 2021 by legal time in the Northern Territory. This is intended to align with the cessation of the Northern Territory public health measures from that same time and date.

Schedule 1—Designated areas

Schedule 1 to the Determination sets out the designated areas for the purposes of section 4 of the Determination. It is intended that information on the designated areas, such as maps to provide guidance on the boundaries of the designated areas, will be made available to those affected by the Determination.

Clause 1 of Schedule 1 relates to the Locality of Ali Curung which is located 21 kms off the Sturt Highway. This clause describes the area bounded by a circle of radius 5 km, the centre of which is Lot 168 Jungara Street in NT Portion 906. Lot 168 was

chosen as the central point as it is the location of the Minirri Store, which would be an easily identifiable landmark for the local community.

Clause 2 of Schedule 1 relates to Homeland areas, which are set out in a table to the section. Each of the areas set out in the second column of the table is bounded by a circle of radius 500m, the centre of which is at the geographic co-ordinate point set out in the third and fourth columns of the table.

Schedule 2—Relevant decision-makers

Clause 1 of Schedule 2 sets out the offices, appointments and positions of relevant decision-makers for designated areas. The office, appointment or position for a designated area in the Northern Territory is:

- The chief human biosecurity officer for the Northern Territory;
- A human biosecurity officer who is an employee of the State or Territory body responsible for the administration of health services in the Northern Territory;
- The Chief Health Officer of the Northern Territory;
- The Commissioner of Police and Chief Executive Officer of the Fire and Emergency Service of the Northern Territory.