

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022

Purpose

The *Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022* (the Amendment Determination) amends the *Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2022* (the Determination) to respond to the ongoing COVID-19 outbreak in remote communities in the Northern Territory.

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. After amendment, the designated areas are described in Schedule 2 to the Determination, 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 remote communities’ requirements are, among other matters, being amended to:

- Expand the permitted activities for a person to enter or leave a designated area so that people may obtain tertiary education, visit a national park, or can attend their workplace in the course of their employment.
- Allow a person who has been provided a permit by a Land Council under the *Aboriginal Land Act 1978* (NT) to enter a designated area.
- Allow people who are residents of certain remote communities to leave, and return to, their designated area to travel to communities that are not designated areas to obtain food, fuel and mail as necessary.
- Remove designated areas that no longer require the remote communities’ requirements to control the spread of COVID-19, which are the Central designated zones and Tiwi Islands designated zones.
- Extend the operation of the Determination to 3 March 2022 to enable the Determination to continue to reduce the movement of people between remote communities in Northern designated zones and, as a result, ease the strain on local health services.
- Make technical amendments to remove references to ‘designated locations’ as Schedule 1 to the Determination which set out these designated locations is no longer in force.

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; and
- 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, as amended, to continue to be in force in order to provide clarity as to what will be considered a designated area and ensure an appropriate balance between restrictions and essential movement in the designated areas (where permitted).

The Amendment 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. This is particularly so in the present case 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 unless they relate to a biosecurity measure of a kind set out in Subdivision B of Division 3 of Part 3 of Chapter 2 (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).

Public health measures have been put in place by the Northern Territory Government to limit the spread of COVID-19 across the Northern Territory, such as mask wearing requirements. The Determination continues to support the measures undertaken by the Northern Territory Government to reduce the spread of COVID-19 in remote communities. The Determination, as amended, will continue to support the Northern Territory Government’s response to the COVID-19 outbreak in the remote communities that fall within the responsibility of the Northern Land Council by allowing time to mobilise further on the ground resources, including support from the Commonwealth for increased Rapid Antigen Tests (RATs), COVID-19 treatments including oral therapeutics, Personal Protective Equipment (PPE) and workforce to support testing, vaccinations and critical care in these broad regional areas.

Commencement

Sections 1 to 4 and Schedule 1 of the Amendment Determination commence immediately after the Amendment Determination is registered on the Federal Register

of Legislation. Schedule 2 of the Amendment Determination commences on 18 February 2022.

Consultation

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

Details of the *Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022*

Section 1 provides that the name of the Amendment Determination is the *Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022*.

Section 2 sets out the commencement provision for the Amendment Determination in the form of a table. The commencement provision relevantly provides that sections 1 to 4 and anything in the Amendment Determination not elsewhere covered by the table in the provision, and Schedule 1 to the Amendment Determination, commences immediately after the Amendment Determination is registered. The commencement provision provides that Schedule 2 to the Amendment Determination commences on 18 February 2022.

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 that is 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 commencing immediately after registration

Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2022

Item 1 amends section 8 of the Determination to omit the words '17 February' and substitute '3 March'. In effect, this will extend the application of the remote communities' requirements to 3 March 2022 in the designated areas, as amended by Schedule 2 of the Amendment Determination from 18 February 2022.

Schedule 2—Amendments commencing 18 February 2022

Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2022

Item 1 amends section 4 of the Determination, which sets out the definitions used in the Determination, to insert two new definitions of 'Aboriginal land' and 'Aboriginal Land Act'. Aboriginal land is defined to have the same meaning as in the *Aboriginal Land Rights (Northern Territory) Act 1976*. The Aboriginal Land Act means the *Aboriginal Land Act 1978* (NT) as in force on 18 February 2022. The Aboriginal Land Act is referenced in new subsection 5(4A) set out in Item 12 below.

Item 2 amends the definition of 'designated area' in section 4 of the Determination to omit the words 'a designated location or a designated zone, excluding so much of the designated location or designated zone', and substitute the words 'a designated zone,

excluding so much of the designated zone'. This reflects that Schedule 1, which set out the designated locations, is no longer in force by virtue of the self-repeal provision in Clause 7 of Schedule 1 to the Determination (see also Items 4 and 19 below).

Item 3 amends the definition of 'designated area' in section 4 of the Determination to insert a new paragraph (e). New paragraph (e) will have the effect that any part of a designated zone within the boundaries of a national park (see new definition in Item 6 below) will be excluded from being a designated area for the purposes of the Determination.

Item 4 repeals the definition of 'designated location' from section 4 of the Determination as this definition is no longer required given the designated locations are no longer in effect (see Item 2 above).

Item 5 amends the definition of 'freehold land' in section 4 of the Determination to omit the words 'other than NT Portion 4069 (Laramba Community Incorporated)' from the definition. This amendment is consequential to Item 20 below, which will repeal the Central designated zone in Part 1 of Schedule 2. Laramba, as a community, is in the Anmatjere ward in the Central designated zone. As the reference to the Anmatjere ward will be repealed, the reference to NT Portion 4069 and the community of Laramba will no longer be required when determining what is freehold land for the purposes of the Determination.

Item 6 inserts a new definition into section 4 of the Determination for the phrase 'national park'. A national park will be defined to mean a national park established under a law of the Commonwealth or the Northern Territory. Under the amendments introduced by Items 3 and 9, an area that is a national park will not be part of a designated area and visiting a national park will be a permitted activity for those who are in a designated area.

Item 7 repeals paragraph (d) of the definition of 'permitted activity' in section 4 of the Determination and substitutes a new paragraph (d). New paragraph (d) provides that a person, who is employed or engaged to provide services, attending their workplace in the course of the person's employment or engagement will be a permitted activity for the purposes of the Determination.

Item 8 omits the words 'who is engaged in an essential activity, and' from paragraph (e) of the definition of 'permitted activity' in section 4 of the Determination. The effect of this amendment is that any person who is a parent or guardian of a child will be permitted to obtain child care, early childhood education, or education in a primary or secondary school for the child, as appropriate.

Item 9 adds new paragraphs (p) and (q) to the end of the definition of 'permitted activity' in section 4 of the Determination to provide that a person who is obtaining tertiary education, or who is visiting a national park, respectively, is undertaking a permitted activity.

Item 10 amends paragraph 5(1)(d) of the Determination to omit the words '1 or' from the provision, which is a consequential amendment to the Determination to reflect the repeal of Schedule 1 to the Determination (see Item 19 below).

Item 11 amends subparagraph 5(1)(e)(v) of the Determination to omit the words ‘(5) and (6)’ and substitute ‘(4A), (5), (6), (6A) and (7)’. This has the effect that the expanded reasons for entering a designated area are captured by paragraph 5(1)(e) of the Determination.

Item 12 inserts a new subsection 5(4A) after subsection 5(4) of the Determination. New subsection 5(4A) provides that a person may enter the designated area if the person is permitted to enter onto Aboriginal land in the area under subsection 4(2) of the Aboriginal Land Act (NT). Subsection 4(2) of the Aboriginal Land Act provides that an Aboriginal person who is entitled by Aboriginal tradition to enter onto an area of Aboriginal land may enter onto that area of Aboriginal land.

New subsection 5(4A) also provides that a person may enter the designated area if there is in force a permit issued to the person to enter onto and remain on Aboriginal land, or use a road, in the area under subsection 5(1) of the Aboriginal Land Act. Subsection 5(1) of the Aboriginal Land Act provides that the Land Council for the area in which Aboriginal land or a road is situated may issue a permit to a person to enter onto and remain on that Aboriginal land or use that road subject to such conditions as the Land Council thinks fit. This amendment has been put in place to recognise that Land Councils, in providing a permit, have authorised a person from outside a designated area to enter that area, and has the effect that the person with a permit from a Land Council does not have seek additional permission from a relevant decision-maker under subsection 5(4) of the Determination.

Item 13 repeals subsection 5(6) and inserts new subsections 5(6) and 5(6A) into the Determination. Subsection 5(6) is being repealed due to the repeal of the Central designated zones in Part 1 of Schedule 2 (see Item 20 below), as subsection 5(6) refers to a designated zone that is being repealed and is therefore no longer required.

New subsection 5(6) provides that a person may enter the designated area if the following requirements are met:

- the area is the designated zone described in clause 4 of Schedule 2 (the East Arnhem designated zone); and
- the premises where the person resides is in the ward of Gumurr Miwatj; and
- the person is entering the area to return to those premises; and
- the person left the area to travel to Nhulunbuy in reliance on subsection 7(3) for the permitted activity of obtaining food, fuel or mail; and
- while outside the area, the person took reasonable steps (having regard to the person’s circumstances) to minimise the extent to which anyone else was exposed to the person.

New subsection 5(6A) provides that a person may enter the designated area if the following requirements are met:

- the area is the designated zone described in clause 5 of Schedule 2 (the Roper Gulf designated zone); and
- the premises where the person resides is in the area; and
- the person is entering the area to return to those premises; and

- the person left the area in reliance on subsection 7(5), which provides that a person may leave a designated zone if they are leaving to enter freehold land in Borroloola with the permission of the owner of the freehold land; and
- while outside the area, the person took reasonable steps (having regard to the person's circumstances) to minimise the extent to which anyone else was exposed to the person.

Item 14 inserts a new paragraph 6(1)(fa) after paragraph 6(1)(f) of the Determination. The effect of new paragraph 6(1)(fa) is that a person who enters a designated area under new subsection 5(4A) (about persons permitted to enter Aboriginal land in the area) is subject to the requirement to 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.

Item 15 repeals paragraph 6(1)(h) of the Determination to substitute new paragraphs 6(1)(h) and 6(1)(i). The effect of new paragraphs 6(1)(h) and 6(1)(i) is that a person who enters a designated area under new subsections 5(6) or 5(6A) (described in Item 13 above) is subject to the requirement to 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.

Item 16 repeals subparagraph 7(1)(f)(iv) and substitutes a new subparagraph 7(1)(f)(iv) into the Determination. New subparagraph 7(1)(f)(iv) has the effect that a person is permitted to leave the designated area if at least one of subsections 7(2), 7(3), 7(4) and 7(5) applies to that person.

Item 17 repeals paragraph 7(1)(g) of the Determination. This is a consequential amendment as the designated locations, which include Milikapiti, are no longer in force and Schedule 1 to the Determination will be repealed by Item 19 below.

Item 18 repeals subsection 7(5) of the Determination and substitutes a new subsection 7(5). Subsection 7(5) has been repealed as it referred to leaving the designated location of Milikapiti. Schedule 1 to the Determination, which sets out the designated locations, is no longer in force and will be repealed by Item 19 below.

New subsection 7(5) relevantly provides that a person may leave the designated zone described in clause 5 of Schedule 2 (the Roper Gulf designated zone) if the person is leaving the area to enter freehold land in Borroloola with the permission of the owner of the freehold land.

Item 19 repeals Schedule 1 to the Determination, which sets out the designated locations for the Determination. However, because of the self-repeal in Clause 7, which has repealed all clauses of the schedule as at 5pm, by legal time in the Northern Territory, on 7 February 2022, Schedule 1 is no longer required and is therefore being repealed.

Items 20 and 23 repeal Part 1 and Part 3 of Schedule 2 to the Determination, respectively. Part 1 of Schedule 2 set out the Central designated zones and Part 3 of Schedule 2 set out the Tiwi Islands designated zones. Part 1 and Part 3 have been repealed so that these zones are not subject to the remote communities' requirements

set out in the Determination, because the requirements are no longer necessary. However, the remote communities' requirements remain necessary for the Northern designated zones to reduce the movement of people in and out of designated areas and therefore limit the potential spread of COVID-19. The Northern designated zones are set out in Part 2 of Schedule 2 and are subject to the extension of the operation of the Determination to 3 March 2022 (as implemented by Schedule 1, Item 1 of the Amendment Determination above).

Item 21 repeals the heading in Part 2 of Schedule 2 to the Determination. This is a consequential amendment as the repeal of Parts 1 and 3 of Schedule 2 mean it is not necessary to differentiate Part 2 from other parts of the schedule, as the content of Part 2 is the only Part remaining after repeal.

Item 22 amends paragraph 4(d) of Schedule 2, relating to the description of the Gumurr Miwatj ward, to omit 'in the Schedule' and substitute the words 'in clause 1 of the Schedule'. This amendment better reflects the area to be described as a designated zone. This means that the area of land described in Clause 1 of the Schedule to the COVID-19 Directions (No. 7) 2022: Amendment of COVID-19 Directions (No. 3) 2022 (NT) will not be considered part of the Gumurr Miwatj ward for the purposes of the Determination. The land is described in that direction as the area of land comprising the localities of Nhulunbuy, Gunyangarra and Yirrkala, Northern Territory Portions 1197, 1198, 1692 and 1065, and the land subject to Exploration License 30226 (a mineral exploration license granted under the *Mineral Titles Act 2010*).

Items 24, 25 and 26 amend Clause 1 of Schedule 3 (table items 9, 10 and 11).

Item 24 repeals table item 9. Table item 9 set out the relevant decision makers for a designated zone described in Part 1 of Schedule 2 or a designated location within such a zone. However, as both the designated locations are no longer in effect and Schedule 1 is being repealed (Item 19), and Part 1 of Schedule 2 is being repealed (Item 20), it is not necessary to specify the relevant decision-makers in respect of these designated areas.

Item 25 amends table item 10 to omit the words 'described in Part 2 of Schedule 2 or a designated location within such a zone'. This is a consequential amendment to the repeal of Schedule 1 in Item 19 above and the repeal of Parts 1 and 3 of Schedule 2, as there are no longer designated locations for the purpose of the Determination and it is not necessary to refer to Part 2 of Schedule 2 as this heading has been removed (Item 21).

Item 26 repeals table item 11. Table item 11 set out relevant decision-makers for a designated zone described in Part 3 of Schedule 2 or a designated location within such a zone. However, as both the designated locations are no longer in effect and Schedule 1 is being repealed (Item 19), and Part 3 of Schedule 2 is being in repealed (Item 23), it is not necessary to specify the relevant decision-makers in respect of these designated areas.