

**2019 – 2021**

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**BIOSECURITY AMENDMENT (NO CRIME TO RETURN HOME) BILL  
2021**

**EXPLANATORY MEMORANDUM**

Circulated by authority of  
Senator Rex Patrick

## **Biosecurity Amendment (No Crime to Return Home) Bill 2021**

### **Outline and Scope**

The Bill amends the *Biosecurity Act 2015* to prohibit the Minister for Health from determining requirements under section 477, or giving directions under section 478 of the Act, during a human biosecurity emergency that prevent Australians from returning to Australia. This Bill will not restrict the Minister specifying other requirements in relation to a human biosecurity emergency.

Section 477 of the Act allows the Minister to make a determination that imposes requirements during a human biosecurity emergency period. These requirements allow the Minister to prevent and control the entry, emergence, establishment or spread of a declared listed human disease in an Australian territory or part of an Australian territory or another country or give effect to a recommendation made by the World Health Organization under Part III of the International Health Regulations.

The determination can include requirements that apply to persons entering or leaving specified places, or restrict or prevent the movement of persons. Under section 479 a failure to comply with this determination can result in a fine or imprisonment for up to five years.

Section 478 of the Act allows the Minister to give a direction to any person on the same grounds as making a determination under section 477. A failure to comply with such a direction can also result in a fine or imprisonment for up to five years under section 479.

Determinations made under section 477 and directions given under section 478 are not subject to disallowance.

The Bill will amend sections 477 and 478 of the Act to prohibit the Minister from making a determination or giving a direction that prevents or restricts an Australian citizen or permanent resident outside Australia from returning to Australia.

On 1 May 2021, the Health Minister made the *Biosecurity (Human Biosecurity emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements – High Risk Country Travel Pause) Determination 2021* under section 477 to prohibit Australians on international flights from India from entering Australia between 3 May and 15 May 2021. This caused many Australians in India to be stranded in India at the time when India was experiencing record-breaking infection rates of Covid-19 and when the Indian medical system was near collapse. The Bill will also repeal this determination.

At the time the determination was met with harsh criticism, however, as the determination is exempt from Parliamentary scrutiny there is no Parliamentary oversight or opportunity to avoid this breach of international law and the Constitution of Australia. The only way to prevent future opportunities of overreach and abuse of

power is to make a prohibition that a Minister can exercise far-reaching unlimited powers without restriction.

### **Financial Impact**

The Bill will have no financial impact.

## **Statement of Compatibility on Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

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This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Bill**

The Bill amends the *Biosecurity Act 2015* to prohibit the Minister for Health from exercising powers under sections 477 and 478 of the Act during a human biosecurity emergency to prevent Australians from returning to Australia.

For clarity, a person returning to Australia can still be subject to other biosecurity measures under the Act, including a human biosecurity control order under Part 3 of Chapter 2. For example, such an order can require biosecurity measures under sections 85 to 101 of the Act that relate to restricting behaviour, risk minimisation interventions, receiving vaccinations or treatment or medication and isolation.

### **Human Rights implications**

This Bill is compatible with International Human Rights and in particular the right of return to their country of origin or citizenship.

This right is contained in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination.

Article 13 of the Universal Declaration of Human Rights states:

*“Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country.”*

Article 12(4) of the International Covenant on Civil and Political Rights states:

*“No one shall be arbitrarily deprived of the right to enter his own country”.*

Article 5d of the Convention on the Elimination of All Forms of Racial Discrimination states:

*“The right to leave any country, including one’s own, and to return to one’s country”.*

**Conclusion**

This Bill is compatible with international human rights and freedoms as it ensures Australian citizens and Australian permanent residents have the right to return to Australia in all circumstances.

## **Notes on Clauses**

### **Clause 1 Short title**

1. This clause is the formal provision and specifies that the short title of the Act may be cited as the *Biosecurity Amendment (No Crime to Return Home) Act 2021*.

### **Clause 2 Commencement**

2. This clause provides for the commencement of the whole of the Act to be the day after the Act receives Royal Assent as prescribed in the table.

### **Clause 3 Schedules**

3. This clause states that legislation specified in the Schedule to this Act is amended or repealed as is set out in the applicable items in the Schedule. Any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1 – Amendments**

### **Part 1 – Repeals**

#### **Item 1 – The whole of the instrument**

4. **Item 1** repeals the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—High Risk Country Travel Pause) Determination 2021*.
5. On 1 May 2021 the Health Minister made the determination that prohibits a person from arriving in Australia where 14 days prior to their arrival they were in India. A breach of this prohibition may incur a fine or term of imprisonment. The determination is in effect from 3 May until 15 May 2021.

### **Part 2 – Amendments**

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

#### **Item 2 – At the end of subsection 477(1), and Item 5 – At the end of subsection 478(1)**

6. Items 2 and 5 amend the *Biosecurity Act 2015* to include a note at the end of subsections 477(1) and 478(1). New Note 3 states that certain requirements must not be determined under this subsection, such as a requirement that prevents an Australian citizen or Australian permanent resident who is overseas from returning to Australia.
7. Note 3 provides clarity that subsections 477(5A) and (6) and 478(5A) and (6) restrict the exercise of the Minister’s discretion under subsections 477(1) and 478(1) respectively. The Minister for Health cannot include in a determination under subsection 477(1) or in a direction under subsection 478(1) a ban on

Australian citizens or permanent residents from returning to Australia during a human biosecurity emergency.

**Item 3 – At the end of paragraph 477(3)(b)**

8. Item 3 amends paragraph 477(3)(b) to clarify that the exercise of the powers under the subsection are subject to new subsection 477(5A). New subsection 477(5A) is explained at Item 4.
9. Subsection 477(3) provides a non-exhaustive list of requirements that the Health Minister may specify when making a determination under subsection 477(1).

**Item 4 – After subsection 477(5)**

10. Item 4 amends section 477 to include new subsections 477(5A) and (5B).
11. New subsection 477(5A) provides that a determination made under subsection 477(1) must not prevent or restrict an Australian citizen or permanent resident who is outside Australian territory from entering Australian territory.
12. The effect of this new subsection is to remove the Health Minister's ability to impose a ban on the return of Australian citizens and permanent residents to Australia during a human biosecurity emergency for biosecurity reasons.
13. New subsection 477(5B) clarifies that subsection 477(5A) does not prevent a determination made under subsection 477(1) being applicable to an Australian citizen or permanent resident once they return to Australia.
14. The terms *Australian citizen* and *permanent resident* are defined in the *Australian Citizenship Act 2007*.
15. For new subsection 477(5A) a permanent resident, who wishes to return to Australia, must have a Resident Return visa (subclasses 155 and 157) in effect at the time of their arrival in Australia.

**Item 6 – After subsection 478(5)**

16. Item 6 amends subsection 478(5) to include new subsection 478(5A) to provide that a direction given under subsection 478(1) must not prevent or restrict an Australian Citizen or permanent resident who is outside Australian territory from entering Australian territory.
17. The effect of this new subsection is to remove the Health Minister's ability to impose a ban on the return of Australian citizens and permanent residents during a human biosecurity emergency for biosecurity reasons.
18. New subsection 478(5B) clarifies that subsection 478(5A) does not prevent a direction given under subsection 478(1) being applicable to an Australian citizen or permanent resident once they return to Australia.

19. The terms *Australian citizen* and *permanent resident* are defined in the *Australian Citizenship Act 2007*.
20. For new subsection 478(5A) a permanent resident, who wishes to return to Australia, must have a Resident Return visa (subclasses 155 and 157) in effect at the time of their arrival in Australia.

**Item 7 – Application of amendments**

21. Item 7 provides that the amendments of the *Biosecurity Act 2015* apply to any subsequent determination under subsection 477(1) or direction under subsection 478(1) on or after the time of commencement, regardless of whether the human biosecurity emergency period during which the determination or direction is made begins before, on or after commencement.
22. This Item is intended to make it clear that the amendments made at Items 2 to 6 will operate in relation to future determinations or directions made in relation to the current human biosecurity emergency period that has been declared in relation to the Covid-19 coronavirus as well as for determinations or directions relating to human biosecurity emergencies that may arise in the future.