

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020

Subsection 477(1) of the *Biosecurity Act 2015* (the 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, emergence, establishment or spread of a listed human disease in Australian territory; or
- to prevent or control the spread of the listed human disease to another country; or
- to give effect to a recommendation made to the Health Minister by the World Health Organization (WHO) under Part III of the International Health Regulations.

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (the Declaration) has declared that a human biosecurity emergency exists regarding the listed human disease ‘Human coronavirus with pandemic potential’ (COVID-19). The human biosecurity emergency period is in force for 3 months beginning immediately after registration of the Declaration.

During a human biosecurity emergency period, the Health Minister may, in accordance with sections 477 and 478 of the Act, determine emergency requirements, or give directions, that he is satisfied are necessary to prevent or control the entry, emergence, establishment or spread of the declaration listed human disease COVID-19 in Australian territory. A person who fails to comply with a requirement or direction may commit a criminal offence (imprisonment for maximum 5 years, or 300 penalty units).

The purpose of this legislative instrument is to impose a requirement that international cruise ships not enter Australian ports before 15 April 2020 (the international cruise ships requirement).

The Director Human Biosecurity (who is also the Commonwealth Chief Medical Officer), and the Secretary of the Department of Home Affairs, have advised the Health Minister, and the Health Minister is satisfied, that the international cruise ships requirement is necessary to prevent or control the entry, emergence, establishment or spread of a COVID-19 in Australian territory.

Before making an emergency requirement or giving a direction, the Health Minister must also be satisfied, and the Health Minister is satisfied, that the requirement or direction:

- is likely to be effective in, or contribute to, achieving its purpose;
- is appropriate and adapted to its purpose; and
- is no more restrictive or intrusive than required in the circumstances, including, for a requirement, in the manner in which it is to be applied

In addition to being satisfied of the above effectiveness and proportionality matters, the Health Minister must also set a suitable period for a particular requirement or direction to remain in force. This must be no longer than necessary, and at any rate cannot exceed the human biosecurity emergency period.

The effectiveness and proportionality of the international cruise ships requirement, and its period (ending 15 April 2020), is supported by the Director of Human Biosecurity, and the Secretary of the Department of Home Affairs.

The international cruise ships requirement commences immediately after it is registered and remains in force until 15 April 2020.

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. The pathogen is a novel (new) coronavirus. On 21 January 2020 ‘Human coronavirus with pandemic potential’ became a ‘listed human disease’ by legislative instrument made by the Director of Human Biosecurity under the Act. 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)’. It is closely related genetically to the virus that caused the 2003 outbreak of Severe Acute Respiratory Syndrome (SARS). The international name given by WHO to the disease caused by SARS-CoV-2 is Coronavirus disease 2019 (COVID-19).

COVID-19 has entered Australia. It 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 Australian community socially and economically.

On 17 February 2020 the Australian Health Protection Principal Committee (AHPPC) endorsed the Australian Health Sector Emergency Response Plan (Health Sector Emergency Plan). On 27 February 2020, the Prime Minister of Australia announced the Australian Government had endorsed and activated the Health Sector Emergency Plan. The Prime Minister noted the rate of transmission of the virus outside mainland China, and the indications that the world will soon enter a pandemic phase of the listed human disease. On 11 March 2020 WHO declared the outbreak of COVID-19 a pandemic.

Emergency requirements and directions

An emergency requirement is a non-disallowable legislative instrument (s 477(2)). A direction is not a legislative instrument, and it may be oral or in writing (including by electronic means) (s 572). The Health Minister makes requirements or gives directions personally (s 474).

The requirements that the Health Minister may determine include: 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 (s 477).

The directions that the Health Minister may give include: 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 s 477; and directions to give effect to a recommendation made to the Health Minister by the World Health Organization under Part III of the International Health Regulations (s 478).

These emergency powers may override any Commonwealth, state or territory law (ss 477(5) and 478(4)) although state and territory officials cannot be directed without agreement (s

478(5)). Biosecurity measures under a human biosecurity control order may continue to be imposed on an individual basis (ss 477(6) and 478(6)). The Act provides for the ability to override other law to ensure that any person who acts in accordance with a requirement or direction will not be liable for an offence under that Australian law in circumstances where their actions would ordinarily be in contravention of that law.

The Australian Government has established protocols for the exercise of emergency powers under the Act to ensure that the emergency powers are only used where necessary to protect the health of Australians, based on expert advice and following appropriate consultation.

To ensure that the Determination is in place to address emergency human biosecurity risk, the Determination commences immediately after it is registered.

Consultation

The international cruise ships requirement is supported by advice from the Director of Human Biosecurity, and the Secretary of the Department of Home Affairs. The Health Minister also informed each State, the Northern Territory, the Australian Capital Territory, and the Director of Biosecurity (who is the Secretary of the Department of Agriculture, Water and the Environment).

The requirement is a non-disallowable legislative instrument under the *Legislation Act 2003*. The Act provides for the requirement to be non-disallowable to ensure that the Commonwealth is able to take the urgent action necessary to manage a nationally significant threat or harm to Australia's human health.

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

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020

1 Name

Section 1 provides for the Determination to be referred to as the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020*.

2 Commencement

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

3 Authority

Section 3 provides that the Determination is made under subsection 477(1) of the *Biosecurity Act 2015* (the Act).

4 Definitions

Section 4 provides that a number of expressions used in the Determination are defined in the Act, including Australian territory, foreign vessel, operator, passenger and port.

Section 4 also provides that in the Determination ‘international cruise ship’ means a foreign vessel that has the capacity to carry 100 or more passengers, and is on a voyage from a port outside Australian territory.

Part 2 - Requirements

5 International cruise ships not to enter Australian ports before 15 April 2020

Section 5 provides that the operator of an international cruise ship must cause the ship not to enter a port in Australian territory before 15 April 2020, unless:

- There is in force a permission for the ship to enter the port given by the Comptroller-General of Customs (within the meaning of the *Customs Act 1901*) on the basis that the ship is in distress, or other extraordinary circumstances exist; or
- The ship departed a port outside Australian territory before the end of 15 March 2020 (by legal time in the Australian Capital Territory) and, when it departed that port, was bound directly for a port in Australian territory.

A ‘passenger’ means a person who is lawfully entitled to be on board the vessel, other than a person who is on board the vessel for the purpose of performing functions as the person in charge or as a member of the crew of the vessel: Definitions, section 9 of the Act.

The operator of a conveyance (which includes a vessel) is, if there is a body corporate or an unincorporated body responsible for the operation of the conveyance, that body, and in any other case, the person in charge of the conveyance: section 21 of the Act.