

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Amendment Determination (No. 2) 2020

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (the Declaration) has been made pursuant to section 475 of the *Biosecurity Act 2015* (the Act), and declares that a human biosecurity emergency exists regarding the listed human disease ‘human coronavirus with pandemic potential’ (COVID-19).

The Declaration has been extended pursuant to section 476 of the Act commencing the day after registration of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension) Instrument 2020* for a further period of three months until 17 September 2020.

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 or she 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 or a part of Australian Territory.

Purpose

The purpose of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Amendment Determination (No. 2) 2020* (the Instrument) is to amend the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020* (the Determination) to extend the operation of its provisions until 17 September 2020.

The Determination prevents a cruise ship from entering Australian territory or Australian ports before 15 June 2020, unless an exemption applies to the ship. A cruise ship that enters Australian territory before 15 June 2020 on an overnight voyage must immediately leave Australian territory unless:

- the cruise ship has permission by a Collector for the ship:
 - to enter Australian territory; or
 - to enter a port in Australian territory that the ship has not yet arrived at; or
- the ship is exercising the right of innocent passage; or
- the entry is necessary for the purposes of securing the safety of the ship or saving life at sea; or
- the voyage commenced in Australian territory and is being conducted for the sole purpose of performing necessary maintenance to the ship.

A cruise ship that is on an overnight voyage and in Australian territory must not enter a port in Australian territory before 15 June 2020 unless:

- the cruise ship has permission by a Collector for the ship to enter the port;
- the entry is necessary for the purpose of securing the safety of the ship or saving life at sea; or
- the voyage commenced in Australian territory and is being conducted for the sole purpose of performing necessary maintenance to the ship.

The Determination further provides that foreign cruise ships in Australian territory before 15 June 2020 must leave Australian territory:

- if there is permission from a Collector in place for the ship to remain in Australian territory for a period: immediately after the end of that period; or
- otherwise: as soon as reasonably practicable (having regard to any need to refuel or reprovision the ship) after:
 - in the case of a ship that enters Australian territory or an Australian port in accordance with a permission by the Australian Border Force (ABF) that all the passengers that are to disembark in Australia have done so; or
 - in the case of any other ship—the commencement of the relevant provision of the Determination or the ship’s entry into Australia (whichever is later) unless they have permission from the ABF.

Extending the operation of the Determination made under section 477 of the Act is necessary for the continued management of the human biosecurity risk posed by COVID-19 entering, emerging, establishing or spreading in Australian territory due to cruise ships.

The Director Human Biosecurity (who is also the Commonwealth Chief Medical Officer) has advised the Health Minister, and the Health Minister is satisfied, that the Determination continues to be necessary to prevent or control the entry, emergence, establishment or spread of COVID-19 in Australian territory.

The Director of Human Biosecurity has advised the Health Minister, and the Health Minister is satisfied, that each requirement:

- is likely to be effective in, or contribute to, achieving its purpose; and
- is appropriate and adapted to its purpose; and
- is 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 to remain in force for a further period of three months until 17 September 2020.

To ensure that the requirements continue to be in place to prevent or control the entry, emergence, establishment or spread of COVID-19 in Australian territory, the Instrument amends the Determination so that these requirements will remain in force until the end of 17 September 2020 (unless revoked sooner).

The Instrument is drafted to avoid trespassing on rights and liberties to the greatest extent possible, consistent with the imperative of implementing the measures necessary to prevent or control the emergence, establishment and spread of COVID-19 in Australian territory.

Background

On 5 January 2020, the World Health Organization (WHO) notified Member States under the *International Health Regulations (2005)* 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 section 42 of 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, the 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 the 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.

COVID-19 has entered Australia. It represents a severe and immediate threat to human health in Australia and has disrupted the Australian community socially and economically.

Emergency requirements

Part 2 of Chapter 8 of the Act provides powers to deal with human biosecurity emergencies of national significance during a human biosecurity emergency period.

The requirements that the Health Minister may determine under section 477 of the Act 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 (subsection 477(3)).

Requirements determined under subsection 477(1) of the Act apply despite any provision of any other Australian law (subsection 477(5)). Biosecurity measures under a human biosecurity control order may continue to be imposed on an individual basis (subsection 477(6)).

A person who fails to comply with a requirement determined under section 477 of the Act may commit a criminal offence (punishable by imprisonment for a maximum of 5 years, or 300 penalty units, or both) (subsection 479(3)).

Consultation

The Instrument is supported by advice from the Director of Human Biosecurity.

Consultation also occurred with the Department of Home Affairs, the Department of Infrastructure, Transport, Regional Development and Communications and the Attorney-General’s Department in relation to the Instrument.

The Instrument is a non-disallowable legislative instrument under the *Legislation Act 2003* (the Act, subsection 477(2)). The Act provides for the Instrument 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 Instrument is contained in the Attachment.

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Amendment Determination (No. 2) 2020

1 Name

Section 1 provides for the Instrument to be referred to as the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Amendment Determination (No. 2) 2020*.

2 Commencement

Section 2 provides that the Instrument commences the day after it is registered.

3 Authority

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

4 Schedules

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 concerns, and any other item in a Schedule to this Instrument has effect according to its terms.

Schedule 1 – Amendments

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

Item 1 – Section 1

Item 1 repeals the title “*Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020*”, and substitutes the title with “*Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Cruise Ships) Determination 2020*”. This change is made for clarity, and reflects the fact that other emergency requirements determinations have been made by the Health Minister under section 477 of the Act.

Item 2 – Section 4

Item 2 inserts “*cessation time* means the end of 17 September 2020”. This defined term is used in sections 5 and 6 as a result of Item 4.

Item 3 – Section 5 (heading)

Item 3 omits “15 June 2020”, and substitutes with “cessation time”.

Item 4 – Subsections 5(1) and (2) and 6(1)

Item 4 omits “15 June 2020”, and substitutes with “the cessation time” in each of subsections 5(1) and (2), and 6(1) of the Determination. The effect of this, together with the definition of ‘cessation time’ inserted in section 4 by Item 2, is that:

- the requirement in subsection 5(1) will apply to cruise ships that enter Australian ports before the end of 17 September 2020
- subsection 5(2) will require the operator of a relevant cruise ship to not enter an Australian port before the end of 17 September 2020
- the requirement in subsection 6(1) will apply to the operator of a foreign cruise ship that is in Australian territory before the end of 17 September 2020.

Item 5 - Subparagraph 6(2)(b)(i)

Paragraph 6(2)(b) of the Determination provides that, other than where a ship has a permission under paragraph 6(1)(a), and other than for a ship that entered Australian territory or an Australian port in accordance with a permission under paragraph 5(1)(a) or (2)(a) respectively, the time by which a ship must comply with the requirement in subsection 6(1) is as soon as reasonably practical after the later of (i) the commencement of section 6 or (ii) the ships' entry into Australian territory. For ease of reference, Item 5 repeals the 'reference to the commencement of this section' in subparagraph 6(2)(b)(i), and substitutes the specific time at which section 6 of the Determination commenced: namely 9.45pm, by legal time in the Australian Capital Territory, on 27 March 2020.

Item 6 - Subsection 6(2) (note)

Item 6 repeals the note after subsection 6(2), as a consequence of the amendment made by Item 5.