

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements – Retail Outlets at International Airports) Amendment (No. 1) Determination 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 human biosecurity emergency period ceases on 17 September 2020, unless further extended by the Governor-General.

During a human biosecurity emergency period, the Minister for Health 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 COVID-19, in Australian territory or a part of Australian Territory.

Purpose

This instrument amends the retail outlet emergency requirements in the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Determination 2020* (the current Determination) to allow designated retail outlets to trade in the departure areas of international terminals and international areas of joint domestic/international terminals at Australian international airports (international airports). The operator of the retail outlet can trade provided the operator has put in place and maintains measures to ensure social distancing amongst its customers and measures to minimise the risk of transmission of COVID-19 from international transit passengers. Additional operational mitigation measures will be implemented to manage the risk of international travel, including international transit passengers.

The Acting Director of Human Biosecurity (who is also the Acting Commonwealth Chief Medical Officer) has advised the Minister for Health, and the Minister is satisfied, that the amended retail outlets emergency requirements are necessary to prevent or control the entry, emergence, establishment and spread of COVID-19 in Australia.

COVID-19 continues to represent a severe and immediate threat to human health in Australia. Approximately 47% of Australia’s total COVID-19 cases are associated with international travel, and a number of countries are continuing to experience large increases in new cases being identified each day. Whilst the volume of passengers arriving in and departing Australia has decreased, the overall risk from international travel continues to be unacceptably high. This includes a risk associated with passengers transiting through Australia onwards to another destination overseas.

Allowing retail outlets in the departure areas of international airports to trade, with appropriate social distancing measures in place, is consistent with the broader easing of restrictions within Australia. The risks associated with international transit passengers

accessing retail outlets in departure areas will be managed through specific measures to be implemented operationally by international airports.

The Acting Commonwealth Chief Medical Officer has advised the Minister for Health, and the Minister is satisfied, that the retail outlets requirements, as amended to allow retail outlets in departure areas to trade, provided the operator of the retail outlet puts in place and maintains social distancing measures and measures to manage the risk of COVID-19 transmission from international transit passengers, are necessary to prevent or control the entry, emergence, establishment or spread of COVID-19 in Australian territory and that those requirements:

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

In addition to being satisfied of these matters, the Minister for Health is satisfied that the amended retail outlet requirements will only apply as long as is necessary.

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Amendment (No. 1) Determination 2020* (Amendment Determination) commences the day after registration. The Amendment Determination is automatically repealed after its commencement (section 48A of the *Legislation Act 2003*) as it is incorporated into the Determination itself. The current Determination remains in force for the duration of the human biosecurity emergency period unless it is revoked earlier.

Advice from the Acting Commonwealth Chief Medical Officer supports that the length of the period of the application of the requirements in the Amendment Determination is only as long as is necessary.

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 s 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 continues to represent 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.

Emergency requirements

An emergency requirement is a non-disallowable legislative instrument (subsection 477(2)). The Health Minister may determine emergency requirements under Part 2 of Chapter 8 of the Act (section 474).

The requirements that the Health Minister may determine include, but are not limited to: 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 made under subsection 477(1) apply despite any provision of any other Australian law (subsection 477(5)), with the potential consequence that a person who acts in accordance with a requirement may be protected from criminal liability that would otherwise attach to the person's required actions under State, Territory or Commonwealth 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.

This Amendment Determination has been made relying on subsection 477(1) of the Act, as affected by subsection 33(3) of the *Acts Interpretation Act 1901*.

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

Consultation

The Amendment Determination is supported by advice from the Acting Commonwealth Chief Medical Officer and other relevant Ministers. Consultation has occurred with the states and territories and other stakeholders.

The Amendment Determination 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 – Retail Outlets at International Airports) Amendment (No. 1) Determination 2020

1 Name

Section 1 provides for this instrument to be referred to as the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements – Retail Outlets at International Airports) Amendment (No. 1) Determination 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 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

This Schedule provides for the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Determination 2020* (the Determination) to be amended.

Item 1 – Section 4

This item inserts a new definition of international transit passenger into section 4 of the Determination.

An international transit passenger is a passenger at a designated international airport who is in transit between places outside of Australia. This includes, but is not limited to, passengers who have exited and re-entered the airport in accordance with hotel quarantine arrangements in the State or Territory in which the airport is located and passengers who have arrived and departed Australian territory on the same day.

Item 2 – Before subsection 5(2)

This item inserts, before subsection 5(2), the heading ‘*Exemption of pharmacies*’.

This heading assists to clarify that subsection 5(2) is for retail outlets that are pharmacies.

Item 3 – Subsections 5(3) and 5(4)

This item repeals existing subsections 5(3) and (4) and inserts new subsections 5(3) and (4) and headings describing those subsections.

A heading is inserted in relation to new subsection 5(3) to indicate that this exemption is for designated retail outlets in departure areas.

New subsection 5(3) is intended to provide an exemption to allow designated retail outlets in the departure areas of international terminals and international areas of joint domestic/international terminals to trade. Those retail outlets may be accessed by passengers including departing passengers and international transit passengers with operational mitigation measures in place. Specific operational mitigation measures may be implemented to manage the risk from international transit passengers accessing those outlets such as to purchase food and/or beverages.

Item 3 also inserts, before subsection 5(4), a heading indicating that new subsection 5(4) provides conditions on the exemptions in section 5.

New subsection 5(4) provides that the application of an exemption under subsections (2) and (3) is conditional on the operator of the retail outlet putting in place and maintaining certain measures for social distancing and international transit passengers.

The operator of the retail outlet will need to take social distancing measures such as displaying adequate signage specifying the maximum number of persons that can occupy the retail outlet and marking out spots 1.5 metres apart in all waiting areas in and around the retail outlet.

The operator of the retail outlet will also need to implement measures to minimise the risk of COVID-19 transmission from international transit passengers.

This limit on the application of the exemptions in subsections 5(2) and (3) is important to ensure that the risk of COVID-19 is managed in the relevant retail outlet.

Item 4 – Subsection 6(3)

This item repeals existing subsection 6(3) and inserts a new subsection 6(3) placing conditions on the application of the exemption in subsection 6(1) to the outlet.

New subsection 6(3) provides that the application of an exemption in subsection 6(1) is conditional on the operator of the retail outlet putting in place and maintaining certain measures for social distancing and international transit passengers.

The operator of the retail outlet will need to take social distancing measures such as displaying adequate signage specifying the maximum number of persons that can occupy the retail outlet and marking out spots 1.5 metres apart in all waiting areas in and around the retail outlet.

The operator of the retail outlet will also need to implement measures to minimise the risk of COVID-19 transmission from international transit passengers.

This limit on the application of the exemptions in subsection 6(1) is important to ensure that the risk of COVID-19 is managed in the relevant retail outlet.