

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Repeal Determination 2021

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

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

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Repeal Determination 2010* (the repeal Instrument) repeals the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Determination 2020* (the Determination).

The repeal Instrument is automatically repealed after its commencement under section 48A of the *Legislation Act 2003* (Legislation Act) as it is incorporated into the Determination itself. The Determination will be repealed the day after the repeal Instrument is registered on the Federal Register of Legislation.

The repeal removes the emergency requirements for price gouging essential goods. The Minister for Health, on advice from the Acting Director of Human Biosecurity (who is the Acting Commonwealth Chief Medical Officer), is no longer satisfied that it is necessary for the requirements to apply – i.e. that the requirements are necessary to prevent or control the entry, emergence, establishment or spread of COVID-19 in Australia, in light of there being sufficient access to supply of essential goods in Australia and insufficient evidence that price gouging of essential goods is presently occurring.

The repeal Instrument is made relying on subsection 477(1) of the Act, as affected by subsection 33(3) of the *Acts Interpretation Act 1901*.

Background

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 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.

Emergency requirements and directions

An emergency requirement is a non-disallowable legislative instrument (subsection 477(2)). The Minister for Health makes emergency requirements or gives directions personally (section 474).

The requirements that the Minister for Health 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 (subsection 477(3)).

Requirements determined under section 477 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 a person's required actions under State, Territory or Commonwealth law.

Consultation

Consultation occurred with the Attorney-General's Department, the Department of Home Affairs and the Department of Defence.

The repeal Instrument is a non-disallowable legislative instrument under the Legislation Act. 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 repeal Instrument is contained in the Attachment.

ATTACHMENT

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Repeal Determination 2021

1 Name

Section 1 provides for the instrument to be referred to as the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Repeal Determination 2021*.

2 Commencement

Section 2 provides that the instrument commences the day after the instrument 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 concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Repeals

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Determination 2020

Item 1 – Schedule 1

Item 1 repeals the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Determination 2020*.