

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Amendment (No.1) Determination 2021

Subsection 477(1) of the *Biosecurity Act 2015* (the Act) provides that during a human biosecurity emergency period the Minister for Health may determine any requirement that he or she is satisfied is necessary:

- to prevent or control the entry into, or the emergence, establishment or spread of a listed human disease in Australian territory or a part of Australian territory;
- 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 in relation to the listed human disease.

On 18 March 2020, the Governor-General declared that a human biosecurity emergency exists regarding the listed human disease ‘human coronavirus with pandemic potential’ (COVID-19) (section 475 of the Act).

Purpose

The *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Amendment (No. 1) Determination 2021* (the Amendment Determination) amends the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* (the Determination) so that travel to New Zealand is no longer prohibited by the Determination.

Advice from the Director of Human Biosecurity (who is also the Commonwealth Chief Medical Officer) indicates that amending the Determination to remove the restriction on Australian citizens and permanent residents travelling to New Zealand reflects the latest health assessment of New Zealand that persons travelling to and from New Zealand do not present a threat to controlling the entry into or spread of COVID-19 in Australian territory or part of Australian territory. This is based on an assessment of the epidemiological context in New Zealand, including an assessment of community transmission levels, testing levels within the community, New Zealand’s ability to detect and manage cases, and the border controls and arrangements in place for New Zealand. Further, the advice indicates that the requirement for travellers to be in Australia for 14 days immediately prior to their departure for New Zealand would likely ensure the requirement will also prevent or control the spread of COVID-19 from Australia to New Zealand because travellers from higher risk countries could not travel directly to New Zealand through Australia.

The Amendment Determination commences the day after registration. The Amendment Determination is automatically repealed after its commencement under section 48A of the *Legislation Act 2003* as it is incorporated into the Determination itself. The Determination remains in force for the duration of the human biosecurity emergency period, unless it is revoked earlier.

The Minister for Health is satisfied that the Determination, as amended by the Amendment Determination, is necessary to continue to prevent or control the further entry into, or the emergence, establishment or spread of COVID-19 into Australian territory or a part of Australian territory, and that the amendments will prevent or control the spread of COVID-19 to New Zealand. The Minister for Health is also satisfied that the exemption to permit travel to New Zealand ensures the Determination remains no more restrictive or intrusive than is necessary in the circumstances.

Background

On 5 January 2020, the WHO notified Member States under the *International Health Regulations (2005)* of an outbreak of pneumonia of unknown cause in Wuhan city, China. 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 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 Act provides for the amendment Determination 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. The Minister for Health makes emergency requirements or gives directions personally (section 474).

The requirements that the Minister for Health may determine under section 477 of the Act 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 determined 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 a 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.

A provision-by-provision description of the amendments is contained in the Attachment.

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Amendment (No.1) Determination 2021

Part 1 - Preliminary

1 Name

Section 1 provides that the instrument is the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Amendment (No. 1) 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 - Amendments

1 Paragraph 6(b)

Item 1 omits “is member”, and substitutes “is a member”. This clarifies paragraph 6(b) of the determination.

2 At the end of section 6

Item 2 adds at the end of section 6:

; (f) a person who:

(i) is travelling directly to New Zealand; and

(ii) has been only in Australia for at least 14 days immediately before the day the flight or voyage of the outgoing aircraft or vessel commences.

The effect of new paragraph 6(f) is that a general exemption to the restrictions that apply to (a) Australian citizens and permanent residents, and (b) operators of aircraft and vessels, applies in respect of any Australian citizen or permanent resident who is leaving Australia to travel directly to New Zealand and who has been in Australia (only) for 14 days prior to departure.