**EXPLANATORY STATEMENT**

***Biosecurity Act 2015***

***Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022***

**Purpose**

The *Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022* (the Amendment Determination) amends the *Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 1) 2022* (the Determination) to extend its operation and include additional remote communities.

The Determination made requirements (referred to as remote communities’ requirements) to prevent or control the entry or spread of the listed human disease ‘human coronavirus with pandemic potential’ (COVID‑19) in parts of Australian territory defined as designated areas. The designated areas are described in Schedule 1 to the Determination and are located in the Northern Territory.

The Amendment Determination will amend the Determination so that the remote communities’ requirements will apply to the established designated areas of Amoonguna, Yuelamu and Yuendumu until 3pm (NT time) 23 January 2022. The community of Amoonguna is being reinserted into Schedule 1 of the Determination as the provisions setting out Amoonguna as a designated area self‑repealed.

The Amendment Determination will also insert two additional remote communities as designated areas for the purposes of the Determination. The communities of Elcho Island (including Galiwinku) and Wessel Islands (including Martjanba), and Yirrkala, which are both in East Arnhem Land, were both placed under lockdown restrictions by the Northern Territory Government from approximately 4pm (NT time) on 17 January 2022. The Determination will apply to Elcho Island and Wessel Islands until 24 January 2022 and Yirrkala until 20 January 2022, to align with the length of the lockdown restrictions set out in the relevant Northern Territory public health orders. These communities will be included in the definition of designated areas as a result of rapidly increasing COVID‑19 cases in these regions.

The remote communities’ requirements prevent a person from entering a designated area unless they meet the criteria set out in section 5 of the Determination. The remote communities’ requirements also prevent a person from leaving a designated area unless they meet the criteria set out in section 7 of the Determination.

The Director of Human Biosecurity (who is also the Commonwealth Chief Medical Officer) has advised the Health Minister, and the Health Minister is satisfied, that these requirements are necessary to prevent or control the entry, emergence, establishment or spread of COVID-19 in the designated areas, and in Australian territory more broadly.

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

* are likely to be effective in, or contribute to, achieving its purpose;
* are appropriate and adapted to its purpose;
* are 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 continue to be in force for the same duration as the relevant Northern Territory public health orders, which are the [*COVID-19 Directions (No. 18) 2022: Amendment of COVID-19 Directions (No. 10) 2022*](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0007/1081969/CHO-Directions-No-18-of-2022-Amendment-of-CHO-Directions-No.10-2022.pdf)*,* the [*COVID-19 Directions (No. 19) 2022: Directions to lock out Alice Springs and Amoonguna*](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0008/1081970/CHO-Directions-No-19-of-2022-Directions-to-lock-out-Alice-Springs-and-Amoonguna.pdf), the [*COVID-19 Directions (No. 20) 2022: Directions to lock down Elcho Island including Galiwinku and Wessel Islands including Martjanba*](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0018/1082205/cho-directions-no20of2022.pdf) and the [*COVID-19 Directions (No. 21) 2022: Directions to lock down Yirrkala*](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0019/1082206/cho-directions-no21of2022.pdf).

The Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003*(Legislation Act)*.*

**Authority**

During a human biosecurity emergency period, the Health Minister may, in accordance with section 477 of the *Biosecurity Act 2015* (Biosecurity Act), determine emergency requirements that they are 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.

Subsection 477(1) of the Biosecurity 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 of the declaration listed human disease into Australian territory or a part of Australian territory, or the emergence, establishment or spread of the declaration listed human disease in Australian territory or a part of Australian territory; or
* prevent or control the spread of the declaration listed human disease to another country; or
* give effect to a recommendation that has been made to the Health Minister by the World Health Organization under Part III of the International Health Regulations in relation to the declaration listed human disease.

Subsection 477(2) of the Biosecurity Act provides that a determination made under subsection 477(1) is a legislative instrument, but section 42 (disallowance) of the Legislation Act does not apply to the determination. The risk of such disallowance would inhibit the Commonwealth’s ability to act urgently on public health advice to manage a human biosecurity risk that could threaten or harm human health as it would create uncertainty as to whether the instrument might be disallowed. In the circumstances of the Determination, this is particularly so because remote communities are made up of Aboriginal and Torres Strait Islander peoples who are at a high risk of adverse human health outcomes as a result of exposure to a listed human disease.

These emergency requirements may override any Commonwealth, state or territory law (subsection 477(5) of the Biosecurity Act). Biosecurity measures under a human biosecurity control order may continue to be imposed on an individual basis (subsection 477(6) of the Biosecurity Act).

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

**Background**

On 5 January 2020, the WHO notified Member States under the *International Health Regulations* (2005) (IHR) 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.

On 18 March 2020, the Governor-General declared that a human biosecurity emergency exists regarding the listed human disease ‘human coronavirus with pandemic potential’ (section 475 of the Biosecurity Act, *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*). The human biosecurity emergency period is currently in force until 17 February 2022 (unless extended).

Public health measures have been put in place by the Northern Territory Government to limit the spread of COVID‑19 across the Northern Territory. On 6 January 2022, the Northern Territory Government announced ‘lockout’ restrictions to apply to the Northern Territory, whereby those who are unvaccinated, including people who have received only their first dose of a COVID‑19 vaccine, must stay at home for the lockout period and may only leave their home in specified circumstances, such as for medical treatment or to obtain essential goods.

On 10 January 2022, the Northern Territory Government announced these lockout restrictions would be lifted except in the remote communities of Yuendumu and Yuelamu in Central Australia due to a number of positive COVID-19 cases and the low vaccination rate in both communities. This is reflected in the [*COVID-19 Directions (No. 10) 2022: Directions to lock out Yuendumu and Yuelamu*](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0012/1081101/CHO-Directions-No-10-of-2022-Directions-to-lock-out-Yuendumu-and-Yuelamu.pdf) made by the Northern Territory Chief Health Officer.

On 13 January 2022, the Northern Territory Government announced that lockout restrictions would be applied to the remote community of Amoonguna in Central Australia due to a rising number of positive COVID-19 cases and the low vaccination rate in this community. This is set out in the *[COVID‑19 Directions (No. 12) 2022: Directions to lock out Amoonguna](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0006/1081680/cho-directions-no12of2022.pdf)* made by the Northern Territory Chief Health Officer.

On 14 January 2022, the Northern Territory Government extended the lockout restrictions on Yuendumu and Yuelamu to 12pm (NT time) on 20 January 2022 (see the [*COVID-19 Directions (No. 17) 2022: Amendment of COVID-19 Directions (No. 10) 2022*](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0005/1081850/cho-directions-no17of2022.pdf)).

On 16 January 2022, the Northern Territory Government extended the lockout restrictions on Amoonguna, Yuelamu and Yuendumu to 3pm (NT time) on 23 January 2022. This is set out in the [*COVID-19 Directions (No. 18) 2022: Amendment of COVID-19 Directions (No. 10) 2022*](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0007/1081969/CHO-Directions-No-18-of-2022-Amendment-of-CHO-Directions-No.10-2022.pdf) and the [*COVID-19 Directions (No. 19) 2022: Directions to lock out Alice Springs and Amoonguna*](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0008/1081970/CHO-Directions-No-19-of-2022-Directions-to-lock-out-Alice-Springs-and-Amoonguna.pdf).

On 17 January 2022, the Northern Territory Government placed lockdown restrictions on Elcho Island (including Galiwinku) and Wessel Islands (including Martjanba), and Yirrkala until 24 January 2022 and 20 January 2022, respectively, reflected in the [*COVID-19 Directions (No. 20) 2022: Directions to lock down Elcho Island including Galiwinku and Wessel Islands including Martjanba*](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0018/1082205/cho-directions-no20of2022.pdf) and the [*COVID-19 Directions (No. 21) 2022: Directions to lock down Yirrkala*](https://coronavirus.nt.gov.au/__data/assets/pdf_file/0019/1082206/cho-directions-no21of2022.pdf). As these are lockdown restrictions, rather than the lockout restrictions which apply to Amoonguna, Yuelamu and Yuendumu, both people who are vaccinated and unvaccinated will be subject to these Chief Health Officer Directions.

**Reliance on subsection 33(3) of the *Acts Interpretation Act 1901***

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

**Commencement**

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

**Consultation**

The remote communities’ requirements have been developed with Indigenous stakeholders and the Northern Territory Government.

The Amendment Determination (and therefore the extension of the agreed remote communities requirements) is supported by the Northern Territory Government, Central Land Council, Northern Land Council, the Aboriginal Medical Services Alliance Northern Territory, the National Aboriginal Community Controlled Health Organisation and the National Indigenous Australians Agency.

**ATTACHMENT**

**Details of the *Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022***

**Section 1** provides that the name of the Amendment Determination is the *Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022*.

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

**Section 3** states that the authority for making the Amendment Determination is subsection 477(1) of the Biosecurity Act.

**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**

***Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 1) 2022***

**Item 1** amends section 8 of the Determination to omit the words “12 pm, by legal time in the Northern Territory, on 20 January 2022” and substitute the words “2 pm, by legal time in the Northern Territory, on 24 January 2022”. In effect, this will extend the overall operation of the Determination to 24 January 2022 to align with the relevant Northern Territory public health orders for Elcho Island (including Galiwinku) and Wessel Islands (including Martjanba). However, Items 2, 4, 6 and 7 will introduce self‑repeal clauses for the relevant designated area which align with the relevant Northern Territory public health orders for that designated area.

**Item 2** inserts new Clause 1 before Clause 2 of Schedule 1 to reinsert Amoonguna as a designated area. Subclause 1(1) describes the area bounded by a circle of radius 1km, the centre of which is the Amoonguna Post Office, 61 White Gum Drive, Amoonguna in the Northern Territory, as a designated area. Subclause 1(2) provides that Clause 1 of Schedule 1 is repealed at 3pm, by legal time in the Northern Territory, on 23 January 2022. This is because the Northern Territory public health orders in relation to the community of Amoonguna have been extended to 3pm 23 January 2022.

**Items 3 and 4** amend Clause 2 of Schedule 1. Item 3 inserts “(1)” before the word “This” as Item 4 adds a new subclause to Clause 2. New subclause 2(2) provides that Clause 2 will be repealed at 3pm, by legal time in the Northern Territory, on 23 January 2022. This is because the Northern Territory public health orders in relation to the community of Yuelamu have been extended to 3pm 23 January 2022.

**Items 5 and 6** amend Clause 3 of Schedule 1. Item 5 inserts “(1)” before the word “This” as Item 6 adds a new subclause to Clause 3. New subclause 3(2) provides that Clause 3 will be repealed at 3pm, by legal time in the Northern Territory, on 23 January 2022. This is because the Northern Territory public health orders in relation to the community of Yuendumu have been extended to 3pm 23 January 2022.

**Item 7** adds two new clauses at the end of Schedule 1, with each clause corresponding to a new designated area for the purposes of the Determination.

New Clause 4 of Schedule 1 relates to the community of Elcho Island (including Galiwinku) and Wessel Islands (including Martjanba). This clause describes the lockdown area within the meaning of the *COVID 19 Directions (No. 20) 2022: Directions to lock down Elcho Island including Galiwinku and Wessel Islands including Martjanba (NT)*, as in force at the commencement of the Amendment Determination, as a designated area. If these Northern Territory Chief Health Officer Directions are amended after the commencement of the Amendment Determination, any changes to those directions will not be captured by the Determination without further amendment.

New Clause 5 of Schedule 1 relates to the community of Yirrkala. Subclause 5(1) described the area bounded by a circle of radius 2 km, the centre of which is the Yirrkala Post Office at Lot 81 Galpu Road, Yirrkala in the Northern Territory, as a designated area. Subclause 5(2) provides that Clause 5 will be repealed at 2pm, by legal time in the Northern Territory, on 20 January 2022. This is to align with the relevant Northern Territory public health orders regarding the lockdown restrictions that apply to Yirrkala.