

EXPLANATORY STATEMENT

Biosecurity Act 2015

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020

Section 475 of the *Biosecurity Act 2015* (the Act) provides that the Governor-General may declare that a human biosecurity emergency exists if the Health Minister is satisfied that a listed human disease is posing a severe and immediate threat, or is causing harm, to human health on a nationally significant scale, and the declaration is necessary to prevent or control the entry, emergence, establishment or spread of the listed human disease in Australian territory.

‘Human coronavirus with pandemic potential’ (COVID-19) is a ‘listed human disease’ for the purposes of the Act. The Health Minister is satisfied, as required by subsection 475(1) of the Act, the listed human disease is posing a severe and immediate threat to human health on a nationally significant scale, and the declaration is necessary to prevent or control the entry, emergence, establishment or spread of human coronavirus with pandemic potential (COVID-19) in Australian territory.

The purpose of the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (the Declaration) is to declare that a human biosecurity emergency exists.

The nature of the human biosecurity emergency and the conditions that gave rise to it are that COVID-19 is an infectious disease that has entered Australian territory and is fatal in some cases. There is no vaccine against, or antiviral treatment for, COVID-19 immediately before the commencement of this Declaration. COVID-19 is posing a severe and immediate threat on a nationally significant scale.

The Act provides that the Director of Human Biosecurity is the Commonwealth Chief Medical Officer in the Commonwealth Department of Health. The Director of Human Biosecurity has advised the Health Minister, and the Health Minister is satisfied, that:

- COVID-19 is posing a severe and immediate threat, to human health on a nationally significant scale;
- a human biosecurity emergency declaration is necessary to prevent or control the:
 - entry of COVID-19 into Australian territory; and
 - emergence, establishment or spread of COVID-19 in Australian territory.

The Director of Human Biosecurity also advised the Health Minister, and the Health Minister is satisfied, that 3 months is a suitable period for which the Declaration should remain in force.

The Declaration, and the human biosecurity emergency period, commences immediately after the Declaration is registered on the Federal Register of Legislation. The Declaration, and the human biosecurity emergency period, ends at the end of 3 months beginning on the day the Declaration is registered. In accordance with section 476 of the Act, the Governor-General, on advice from the Health Minister, may, if necessary, vary the Declaration, to extend the human biosecurity emergency period, for a maximum of 3 months each variation.

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 is satisfied are necessary to prevent or control the entry, emergence, establishment or spread of the declaration listed human disease in Australian territory. The requirements or directions may also be made to prevent or control the spread of the declaration listed human disease to another country, or to give effect to a recommendation to the Health Minister by WHO under Part III of the International Health Regulations. A person who fails to comply with a requirement or direction may commit a criminal offence (imprisonment for maximum 5 years, or 300 penalty units).

Background

On 5 January 2020, the World Health Organization (WHO) notified Member States under the *International Health Regulations (2005)* (IHR) 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' under 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, 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 WHO to the disease caused by SARS-CoV-2 is Coronavirus disease 2019 (COVID-19).

COVID-19 has entered Australia. It represents 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.

On 17 February 2020 the Australian Health Protection Principal Committee (AHPPC) endorsed the Australian Health Sector Emergency Response Plan (Health Sector Emergency Plan). On 27 February 2020, the Prime Minister of Australia announced the Australian Government had endorsed and activated the Health Sector Emergency Plan. The Prime Minister noted the rate of transmission of the virus outside mainland China, and the indications that the world will soon enter a pandemic phase of the listed human disease. On 11 March 2020 WHO declared the outbreak of COVID-19 a pandemic.

Emergency requirements and directions

During a human biosecurity emergency period, the Health Minister may make emergency requirements and directions under the Act. An emergency requirement is a non-disallowable legislative instrument (s 477(2)). A direction is not a legislative instrument, and it may be oral or in writing (including by electronic means) (s 572). The Health Minister makes requirements or gives directions personally (s 474).

The requirements that the Health Minister 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 (s 477).

The directions that the Health Minister may give include: a direction to a person who is in a position to close premises, or prevent access to premises, to do so; a direction for the purpose of giving effect to or enforcing an emergency requirement determined under s 477; and

directions to give effect to a recommendation made to the Health Minister by the World Health Organization under Part III of the International Health Regulations (s 478).

These emergency powers may override any Commonwealth, state or territory law (ss 477(5) and 478(4)) although state and territory officials cannot be directed without agreement (s 478(5)). Measures cannot be imposed that would be the same as health biosecurity measures that may be imposed on individuals under a human biosecurity control order (ss 477(6) and 478(6)). The Act provides for the ability to override other law to ensure that any person who acts in accordance with a requirement or direction will not be liable for an offence under that Australian law in circumstances where their actions would ordinarily be in contravention of that law.

Before making an emergency requirement or giving a direction, the Minister for Health must be satisfied that the requirement or direction is necessary to prevent or control:

- the entry of COVID-19 into Australia or a part of Australia;
- the emergence, establishment or spread of COVID-19 in Australia or a part of Australia;
- the spread of COVID-19 to another country; or
- the requirement or direction is necessary to give effect to a recommendation made by the World Health Organization under Part III of the International Health Regulations regarding COVID-19.

The Health Minister must also be satisfied that the requirement or direction:

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

The Health Minister must also set a suitable period for a particular requirement or direction to remain in force. This must be no longer than necessary, and at any rate cannot exceed the human biosecurity emergency period.

The Australian Government has established protocols for the exercise of emergency powers under the Act to ensure that the emergency powers are used only where necessary to protect the health of Australians, based on expert advice and following appropriate consultation. The exercise of the Health Minister's emergency powers will be supported by expert medical advice from the Director of Human Biosecurity or the AHPPC, and consultation with relevant Commonwealth Ministers, and, as appropriate, with states and territories.

Consultation

The Health Minister consulted and is supported by advice from the Director of Human Biosecurity, and the Secretary of the Department of Home Affairs. The Health Minister informed each State, the Northern Territory and the Australian Capital Territory, and the Director of Biosecurity (who is the Secretary of the Department of Agriculture, Water and the Environment).

The Declaration is a non-disallowable legislative instrument under the *Legislation Act 2003*. The Act provides for the Declaration 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 Declaration is contained in the Attachment.

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020

1 Name

Section 1 provides for the Declaration to be referred to as the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*.

2 Commencement

Section 2 provides that the Declaration commences immediately after it is registered.

3 Authority

Section 3 provides that the Declaration is made under section 475 of the *Biosecurity Act 2015*.

4 Human biosecurity emergency

Section 4 declares that a human biosecurity emergency exists.

5 Listed human disease to which this instrument relates

Section 5 provides that this Declaration relates to human coronavirus with pandemic potential.

6 Nature of human biosecurity emergency and conditions that gave rise to it

Section 6 provides that human coronavirus with pandemic potential is an infectious disease:

- (a) that entered Australian territory; and
- (b) that is fatal in some cases; and
- (c) that there was no vaccine against, or antiviral treatment for, immediately before the commencement of this Declaration; and
- (d) that is posing a severe and immediate threat to human health on a nationally significant scale.

7 Period during which this instrument is in force

Section 7 provides that the period during which the Declaration is in force begins when the Declaration commences (ie, on registration), and ends at the end of 3 months beginning on the day the Declaration is registered.

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