

RIGHTS AND RESPONSIBILITIES UNDER THE BIOSECURITY ACT

FACTSHEET



Law Council
OF AUSTRALIA



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BACKGROUND

Since the outbreak of COVID-19 in Australia, federal, state and territory governments have introduced expansive measures in attempt to limit the spread the virus.

This factsheet provides information on the rights and responsibilities of individuals in relation to these measures in different circumstances, with a focus on measures implemented under the *Biosecurity Act 2015* (Cth) (**Biosecurity Act**).*

The powers of federal, state and territory governments to impose bans and restrictions on Australians in the event of a biosecurity emergency:

- are expansive, with limited review mechanisms available; and
- attract significant penalties for non-compliance, meaning that many individuals will have little choice but to adhere to strict measures that will target, amongst other matters, the ability to maintain close physical contact with others.

HUMAN BIOSECURITY

EMERGENCY DECLARATION

On 18 March 2020, the Governor-General declared a human biosecurity emergency (**the Declaration**) pursuant to section 475 of the Biosecurity Act. The Declaration will last for three months unless extended, and grants the Minister for Health broad powers to issue directions and set requirements necessary to prevent or control the entry of, emergence, establishment, or spread of COVID-19 in Australia.

Measures implemented under the Declaration to date have included bans on certain overseas travel and restrictions on cruise ships from entering an Australian port.

It is a criminal offence for a person to intentionally engage in conduct that contravenes a direction or requirement made under the Declaration, attracting a penalty of:

- imprisonment for up to five years; and/or
- a fine of up to \$63,000.

HUMAN BIOSECURITY CONTROL ORDERS

The Biosecurity Act allows Commonwealth, state and territory biosecurity officers, who are so authorised, to issue a 'human biosecurity control order' (**control order**) in relation to a person who may have a listed human disease, including COVID-19.

A control order can include requirements to:

- provide contact information and health details;
- restrict behaviour;
- undergo risk-minimisation interventions, including medical treatment; and/or
- accept isolation from the community for specified periods.

If an individual fails to comply with a control order measure, the consequences may include:

- being detained if it is necessary to counteract the significant risk of contagion that the person poses; and/or
- being charged with a criminal offence, which is punishable by imprisonment for up to five years and/or a fine of up to \$63,000.

Individuals also have the option to not provide consent to a control order. However, where a person refuses to provide consent, the Commonwealth Chief Medical Officer may mandate compliance. In relation to measure regarding self-isolation or isolation at a medical facility, or a traveller movement measure, a person who does not consent must comply for the first 72 hours while the Commonwealth Chief Medical Officer considers the matter.

There are also opportunities to appeal control order decisions made under the Biosecurity Act. Within seven days from when the decision to give a direction to comply with an isolation or traveller movement measure is made, the individual can apply for:

- merits review at the Administrative Appeals Tribunal; and
- judicial review under the *Administrative Decision (Judicial Review) Act 1977* (Cth).

HUMAN HEALTH RESPONSE ZONES

In addition to control order powers, an area can be declared a 'human health response zone' which can impose entry and exit requirements on everyone in a particular zone.

'Human health response zones' have been created for temporary quarantine of individuals. For example, the Swissotel in Sydney is currently a 'human health response zone' whereby the individuals who may enter the Swissotel are restricted to a small list, including, among others:

- those who have returned to Australia from overseas;
- biosecurity officers and police officers; and
- those with permission from those with control over the zone.

Compliance with a requirement of a human health response zone determination is compulsory. A failure to adhere to such a determination attracts a fine of up to \$6,300.

MONITORING AND ENFORCEMENT POWERS

In order to ensure compliance with these measures, biosecurity enforcement officers have the power to:

- monitor and investigate compliance with these measures;
- gain entry to, and search, premises and seize material through a warrant;
- use force as is necessary and reasonable in the circumstances; and
- ask questions and require documents, that may in some instances abrogate the privilege against self-incrimination.

As public authorities respond to COVID-19, it is clear that there are expansive and largely unfettered powers available, justified on the basis of public safety. Many of these powers, including those contained in the Biosecurity Act, are coercive and have the potential to interfere with personal liberties in a manner that may otherwise be unacceptable in the absence of a public health crisis.

STATE AND TERRITORY CONTROL MEASURES

Since the outbreak of the coronavirus, all state and territory governments have enacted laws and/or made orders or regulations designed to control the spread of COVID-19, including requirements that individuals self-isolate for 14 days after returning to Australia from overseas, under the following pieces of legislation:

- *Public Health Act 2010 (NSW)*;
- *Public Health and Wellbeing Act 2008 (Vic)*;

- *Public Health Act 2005 (Qld)*;
- *Public Health Act 1997 (ACT)*;
- *Emergency Management Act 2005 (WA)*;
- *Notifiable Diseases Act 1981 (NT)*;
- *Public Health Act 2011 (SA)*; and
- *Biosecurity Act 2019 (TAS)*.

There are significant pecuniary penalties for non-compliance with these laws, such as a fine of up to \$11,000 and/or imprisonment for up to six months in New South Wales and almost \$20,000 in Victoria for individuals. These measures are evolving rapidly and are likely to become both more restrictive and more strictly enforced as the pandemic continues to spread. For example, on 30 March 2020, the New South Wales Minister for Health issued an order directing that no-one may leave their place of residence without a reasonable excuse or to gather in public in a group of more than two people who are not from the same household.

*DISCLAIMER

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