

## **EXPLANATORY STATEMENT**

### ***Biosecurity Act 2015***

#### ***Biosecurity (Negative Pratique) Amendment (2022 Measures No. 1) Instrument 2022***

#### **Purpose**

The *Biosecurity (Negative Pratique) Amendment (2022 Measures No. 1) Instrument 2022* (Amendment Instrument) amends the *Biosecurity (Negative Pratique) Instrument 2016* (Instrument). Pratique is a permission for an aircraft or vessel to enter a landing place or port, disembark and embark persons, and unload and load goods. Under the *Biosecurity Act 2015* (Biosecurity Act), incoming aircraft or vessels arrive in either positive pratique (where pratique is automatically granted provided certain conditions are met) or negative pratique (where an assessment is required for each incoming aircraft or vessel before pratique is granted). The Instrument sets out the classes of incoming aircraft or vessels subject to negative pratique and requirements that must be complied with for pratique to be granted.

The Amendment Instrument makes several amendments to the Instrument, including to outline what conditions are required to be met before a biosecurity officer can grant pratique to particular classes of aircraft or vessels specified in the Instrument, and that cruise vessels are a specific class of vessels to which negative pratique always applies.

The amendments also provide that an operator of an aircraft or vessel must satisfy a person who is an assessing officer (as defined in the Instrument, as amended by the Amendment Instrument) that the level of human health risk associated with the aircraft or vessel is acceptable. The amendments also provide that an operator of an aircraft or vessel must, if requested by an assessing officer, allow a thing detailed in the request to be loaded onto or unloaded from the aircraft or vessel while it has negative pratique. The amendment also allows an assessing officer, or another person noted in the request, to disembark from or embark onto the aircraft or vessel while it has negative pratique.

Assessing officers are persons with the relevant technical knowledge of human biosecurity risk assessment, being biosecurity officers, or of human health risks, being chief human biosecurity officers or human biosecurity officers as defined in the Biosecurity Act.

The Amendment Instrument also amends the table in subsection 5(2) of the Instrument, to provide that all cruise vessels arrive in Australian territory in negative pratique. This means each cruise vessel will need to be granted pratique by a biosecurity officer before any person can embark onto or disembark from the cruise vessel, or any thing can be loaded or unloaded from the cruise vessel. A definition of ‘cruise vessel’ will be inserted into the Instrument to clarify the subclass of vessel to which negative pratique applies for the purposes of these amendments. A technical amendment will also be made to the definition of ‘prescribed disinsection measures’

to update the relevant cross reference to the Biosecurity Act as mentioned in that definition.

The Amendment Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

### **Authority**

Sections 48 and 49 of the Biosecurity Act relate to the granting of pratique. Pratique allows things to be loaded and unloaded from, and persons to embark onto and disembark from, aircraft or vessels. Pratique can be granted by force of the Biosecurity Act under section 48 (positive pratique) or by a biosecurity officer under section 49 (negative pratique).

Subsection 48(1) of the Biosecurity Act states that an operator of an incoming aircraft or vessel that arrives at a landing place or port in Australian territory must not allow any thing to be unloaded from or loaded onto the aircraft or vessel or any person to disembark from or embark onto the aircraft or vessel unless pratique has been granted under subsection 48(2) or 49(4).

Subsection 48(2) of the Biosecurity Act provides that pratique is automatically granted at the time an aircraft or vessel arrives at a landing place or port in Australian territory, unless the aircraft or vessel is in a class of aircraft or vessels specified for the purposes of paragraph 49(1)(a).

Subsection 48(3) of the Biosecurity Act provides that subsection 48(1) does not apply to the unloading or loading of a thing, or the disembarkation or embarkation of a person, that is authorised by or under this Act or another Australian law.

Subsection 49(1) of the Biosecurity Act provides that the Director of Human Biosecurity (the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer (section 544 of the Biosecurity Act refers)) may specify, in writing, classes of incoming aircraft or vessels in relation to which pratique is to be granted by a biosecurity officer and the requirements with which an incoming aircraft or vessel in that class must comply for pratique to be granted by a biosecurity officer. The Instrument is made under this subsection.

Subsection 49(2) of the Biosecurity Act provides that an instrument made under subsection 49(1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument. 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. The measures introduced by the Amendment Instrument are intended to minimise the risk of incoming aircraft or vessels allowing persons who may have, or have been exposed to, a listed human disease (among other matters) to disembark the relevant aircraft or vessel.

Subsection 49(3) of the Biosecurity Act provides that any requirements specified for the purposes of paragraphs 49(1)(b), which an incoming aircraft or vessel in a class

must comply with for pratique to be granted by a biosecurity officer, must be consistent with Articles 28.2 and 43 of the International Health Regulations. The new requirements introduced by the Amendment Instrument are consistent with Articles 28.2 and 43 of the International Health Regulations.

Subsection 49(4) of the Biosecurity Act provides that a biosecurity officer may grant pratique, orally or in writing, in relation to an incoming aircraft or vessel in a particular class of incoming aircraft or vessel if the aircraft or vessel complies with the requirements specified for that class of aircraft or vessel.

### **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 Instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Consultation**

The Department of Agriculture, Water and the Environment, the Attorney General's Department, the Department of Infrastructure, Transport, Regional Development and Communications, and the Chief Human Biosecurity Officer Forum have been consulted in the drafting of the Amendment Instrument.

**Details of the *Biosecurity (Negative Pratique) Amendment (2022 Measures No. 1) Instrument 2022***

**Section 1** provides that the name of the Amendment Instrument is the *Biosecurity (Negative Pratique) Amendment (2022 Measures No. 1) Instrument 2022*.

**Section 2** provides that the Amendment Instrument commences on the day after it is registered.

**Section 3** states that the authority for making the Amendment Instrument is subsection 49(1) of the Biosecurity Act.

**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**

***Biosecurity (Negative Pratique) Instrument 2016***

**Item 1** amends section 4 of the Instrument, which sets out the definitions used in the Instrument, to insert the definitions for “assessing officer” and “cruise vessel”.

An “assessing officer” is defined to mean a biosecurity officer, chief human biosecurity officer or human biosecurity officer. A “cruise vessel” is defined to mean a passenger vessel that is usually used to provide a service of sea transportation, being a service that is provided in return for a fee payable by persons using the service and is available to the general public.

**Item 2** amends the definition of ‘prescribed disinsection measures’ in section 4 of the Instrument to omit the words ‘section 53’ and substitute ‘section 204A’. This change has been made to refer to the provision in the Biosecurity Act which permits for disinsection measures to be prescribed in the regulations.

**Item 3** amends the table in subsection 5(2) of the Instrument to repeal table items 2 to 4 and substitute new table items 2 to 3.

Section 5 of the Instrument sets out the classes of incoming aircraft or vessels and requirements that must be complied with for pratique to be granted. The table in subsection 5(2) sets out the classes of incoming aircraft or vessels in column 1, and sets out the requirements that must be complied with by the relevant class of aircraft or vessel in column 2 in order for pratique to be granted by a biosecurity officer.

New table item 2 applies to aircraft or vessels in relation to which:

- A pre-arrival report was given in accordance with Part 1 of Chapter 3 of the *Biosecurity Regulation 2016* that included details about an individual on board

- who has, or had during the flight or voyage, signs or symptoms of a listed human disease, or who died during the flight or voyage; or
- Additional or corrected information that was given under section 194 of the Biosecurity Act before the aircraft or vessel arrives at its first landing place or port in Australian territory included details about an individual on board who has, or had during the flight or voyage, signs or symptoms of a listed human disease, or who died during the flight or voyage; or
- A biosecurity officer has, before the aircraft or vessel arrives at its first landing place or port in Australian territory, notified, or attempted to notify, the person in charge that the biosecurity officer is aware, or suspects, that an individual on board:
  - has, or had during the flight or voyage, signs or symptoms of a listed human disease; or
  - has been exposed to a listed human disease; or
  - died during the flight or voyage.

For any aircraft or vessels that meet the above criteria, the requirements that must be complied with are that the operator of the aircraft or vessel must:

- satisfy an assessing officer that the level of human health risk associated with the aircraft or vessel is acceptable; and
- if requested, orally or in writing, by an assessing officer for the purpose of assessing or managing the level of human health risk associated with the aircraft or vessel:
  - allow a thing mentioned in the request to be unloaded from or loaded onto the aircraft or vessel; or
  - allow an assessing officer, or another person mentioned in the request, to disembark from or embark onto the aircraft or vessel.

New table item 3 applies to vessels that are cruise vessels, non-commercial vessels, or vessels (other than non-commercial vessels) in relation to which a pre-arrival report was required to be given, but was not given, in accordance with Part 1 of Chapter 3 of the *Biosecurity Regulation 2016*.

For any vessels that are one of the above classes of vessel, the requirements that must be complied with are that the operator of the vessel must:

- satisfy an assessing officer that the level of human health risk associated with the vessel is acceptable; and
- if requested, orally or in writing, by an assessing officer for the purpose of assessing or managing the level of human health risk associated with the vessel:
  - allow a thing mentioned in the request to be unloaded from or loaded onto the vessel; or
  - allow an assessing officer, or another person mentioned in the request, to disembark from or embark onto the vessel.

The amendments change what must occur before a biosecurity officer can grant pratique. Additionally, due to the risks posed by listed human diseases on cruise vessels (such as COVID-19), amendments have been made to ensure that all cruise vessels arrive in negative pratique, and will need to be granted pratique by a biosecurity officer.

Subsection 49(4) of the Biosecurity Act provides that only a biosecurity officer may grant pratique for the purposes of section 49. However, an assessing officer, under the amendments to the Instrument in Item 1 of Schedule 1 to the Amendment Instrument, may be a biosecurity officer, chief human biosecurity officer or human biosecurity officer. In practice, a biosecurity officer would consult with a chief human biosecurity officer or a human biosecurity officer in certain circumstances before they grant pratique.

There are existing administrative procedures which prompt a biosecurity officer as an assessing officer to consult a human biosecurity officer or chief human biosecurity officer before they can grant pratique, such as where the pre-arrival reporting indicates that a more detailed human health assessment may be required.

An example of how this may work in practice, in relation to COVID-19, is a low-risk situation when a biosecurity officer may assess that there is no human health risk in order to grant pratique. An example of a low-risk situation is a cruise vessel which enters a port and is not carrying passengers. Pratique could be granted by the biosecurity officer if the vessel operator can satisfy the biosecurity officer (usually through the pre-arrival report) that the level of risk is acceptable because all staff are vaccinated, were tested prior to departure and throughout the voyage, and show no symptoms of COVID-19.

If a biosecurity officer is unsure of the presence of a human health risk, they are encouraged to consult a human biosecurity officer or chief human biosecurity officer.

The screening tools (such as pre-arrival reporting) used by biosecurity officers to assess listed human disease risk are designed to guide biosecurity officers on whether human biosecurity officer or chief human biosecurity officer advice is needed in relation to the granting of pratique.

**Item 4** repeals the note to section 5 of the Instrument and substitutes three new notes.

Note 1 provides that a failure to give a pre-arrival report in accordance with Part 1 of Chapter 3 of the *Biosecurity Regulation 2016* may contravene subsection 193(4) of the Biosecurity Act. Subsection 193(4) relevantly provides that if a person is required to give a pre-arrival report and the person does not give the report that:

- includes the information in relation to the aircraft or vessel prescribed by the *Biosecurity Regulation 2016* (the Regulations);
- is given in the manner, and to the person, prescribed by the Regulations;
- is given at a time, or during the period, prescribed by the Regulations; and
- is in a form or forms approved by the Director of Biosecurity (who is the person that is, or is acting as, the Agriculture Secretary (section 540 of the Biosecurity Act refers));

then that person contravenes subsection 193(4), which is an offence under subsection 193(5) of the Biosecurity Act.

Note 2 provides that a failure to give additional or corrected information as required by subsection 194(1) of the Biosecurity Act may contravene subsection 194(2) of the Biosecurity Act. Subsection 194(2) relevantly provides that if a person who is

required to give additional or corrected information does not give the information to a biosecurity officer as required, then the person contravenes subsection 194(2), which is an offence under subsection 194(3) of the Biosecurity Act.

Note 3 provides that an effect of items 2 and 3 of the table is that the unloading or loading of a thing, or the disembarkation or embarkation of a person, in accordance with a request under paragraph (b) of column 2 of those items is authorised for the purpose of subsection 48(3) of the Biosecurity Act. Subsection 48(3) of the Biosecurity Act has the effect that the operator of an incoming aircraft or vessel may allow a thing to be unloaded from or loaded onto the aircraft or vessel, or allow a person to disembark from or embark onto the aircraft or vessel, if those actions are authorised by or under the Biosecurity Act or another Australian law.