



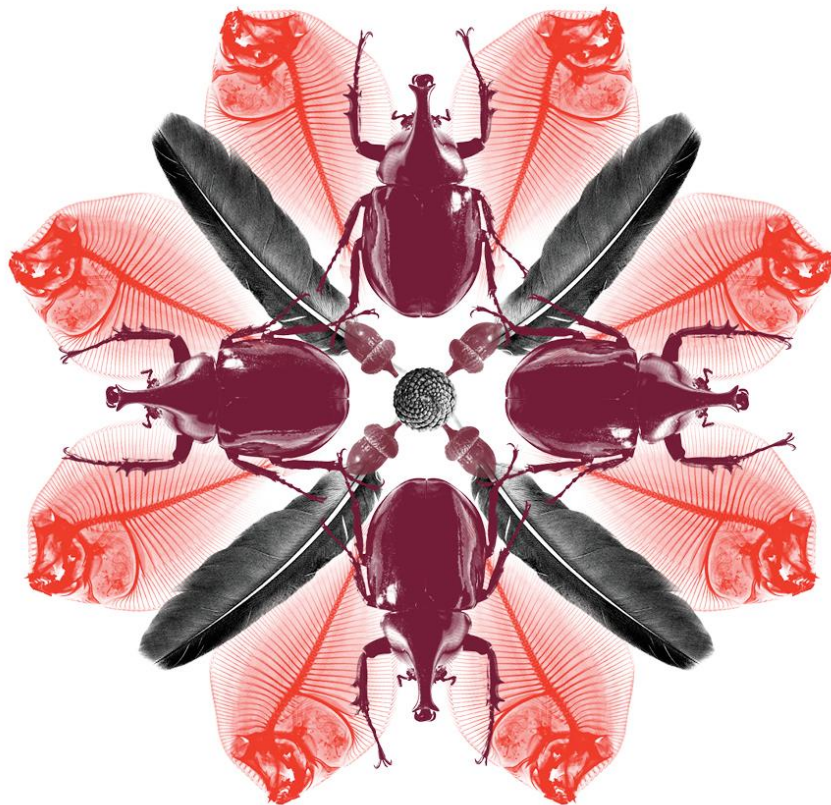
Australian Government  
Department of Agriculture,  
Water and the Environment

# Pratique and human health: amendments to the Biosecurity Act 2015

## Regulation Impact Statement

**Department of Agriculture, Water and the Environment**

Biosecurity Operations Division, OBPR ID 44166



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# Executive Summary

This Regulatory Impact Assessment addresses priority issues with the Commonwealth biosecurity legislation identified in the context of the COVID-19 pandemic. The emergence and global spread of the COVID-19 pandemic since early 2020 has tested Australia's human biosecurity systems in an unprecedented way.

Significant scrutiny has been focussed on the laws underpinning biosecurity, and in particular the ability of the Commonwealth to respond under the *Biosecurity Act 2015*. The berthing of the Ruby Princess cruise ship in Sydney on 19 March 2020 represented a significant biosecurity issue.

## The problem

Independent reviews of the Ruby Princess incident have identified key areas for targeted reform to the Biosecurity Act to provide a better management framework for human biosecurity risks onboard vessels and aircraft entering Australia. These reviews include the New South Wales *Special Commission of Inquiry into the Ruby Princess Cruise Ship Incident* Report and the Inspector-General of Biosecurity Review *Confidence testing for at-border delivery of critical human biosecurity functions - Ruby Princess cruise ship incident*. Both reviews recommended changes to the scheme set out in the *Biosecurity Act 2015* for managing human health risks for incoming passengers to Australia.

The recommendations from these reviews and the lessons learnt through the pandemic response to COVID-19 have highlighted specific issues with the Biosecurity Act relating to:

- The operation of pratique provisions within the Biosecurity Act
- Pre-arrival reporting obligations and the importance of human health assessments prior to entry to a port
- Powers to manage human health of groups of arriving passengers.

## Need for action

The regulatory actions being assessed address the risk of listed human diseases entering Australian territory through international vessel and aircraft arrivals and would apply in the context of the current COVID-19 pandemic, while also providing flexibility to manage infectious disease risks that Australia may face in the future. Specifically, the objectives of the reforms being assessed are to:

- better support human health risk assessments and operational responses to the threat of COVID-19 and other listed human diseases on vessels and aircraft entering Australian territory.
- support the national COVID-19 economic recovery, including steps towards the resumption of the cruise ship industry in Australia, and shoring up the human health biosecurity framework into the future.

The independent reviews raised concerns that issues identified through the arrival of the Ruby Princess cruise ship at the Port of Sydney on 19 March 2020 could apply in similar measure to other cruise ships, in other ports, or for entirely different biosecurity risk pathways. Of particular concern are risk circumstances where the probability of occurrence may be assessed to be low, but the consequences of biosecurity failure are potentially large or extreme.

In the circumstances of the emerging pandemic in early 2020, the government undertook several responses. Regular jurisdictional meetings were introduced and new human health processes for commercial vessels were implemented. While these responses improve the management of biosecurity risks, they do not solve the legislative gaps identified in the reviews so the need for legislative amendments remains. Without the proposed amendments, Australia's industries and people remain at risk, particularly upon the recommencement of the cruise industry.

## Options

This RIS outlines three policy options for Australian Government action:

1. Status quo - The Biosecurity Act includes an existing scheme for managing human biosecurity risks. The scheme allows biosecurity officers to refuse to grant pratique where listed human diseases have been reported, and to issue Human Biosecurity Control Orders to manage individuals with symptoms of, or exposure to, listed human diseases. Under the status quo, the Commonwealth's human biosecurity legislative powers remain limited. Extra human health reporting and risk assessment criteria cannot be enforced, and there is too heavy a reliance on state and territory public health powers to respond to risks identified at the first point of entry. The Australian community will continue to be at a heightened risk of exposure to COVID-19 and other listed human diseases through commercial and cruise vessel and aircraft operations.
2. Emergency powers and legislative instruments - Option 2 would seek to use existing legislative authority to manage relevant human biosecurity risk, including legislative instruments and the Biosecurity Regulation 2016 and the Biosecurity Human Health Regulation 2016. A short-term solution could include use of emergency powers while a human biosecurity emergency is declared. This option does not fully address identified issues relating to preparedness for future emergence of novel illnesses and pandemics. It may generate uncertainty for regulated industries and for the interaction of Commonwealth agencies with state and territory counterparts.
3. Amendments to the Biosecurity Act - Option 3 would seek to amend the Biosecurity Act and associated regulations to address the identified risk of listed human diseases entering Australia through international vessel arrivals. The specific amendment proposals include: multiple pre-arrival reporting requirements for aircraft and vessels; requirements to update pre-arrival reporting; new and increased penalties for non-compliance with pratique and reporting requirements; and a new mechanism to issue human biosecurity group directions to groups of people.

## Amending the Biosecurity Act – the preferred option

The targeted reform proposed in Option 3 represents a critical step towards the national COVID-19 economic recovery, including towards the resumption of the cruise ship industry in Australia, and shoring up the human health biosecurity framework into the future. The proposed legislative amendments aim to address the risk of listed human diseases entering Australian territory through international vessel arrivals and would apply in the context of the current COVID-19 pandemic, while also providing flexibility to manage infectious disease risks that Australia may face in the future.

A key benefit expected to materialise from the preferred option is the support it lends toward the recovery of the cruise industry, to pre-pandemic levels. This includes refilling the 18,135 jobs that existed at the end of the 2018-19 financial year and building back up to the \$5.2 billion in annual economic output that was generated directly and indirectly by the industry. Any regulation that will support the recovery of the industry will be of significant value to the Australian economy and community as a whole.

The proposed changes address the desired policy objectives, with the benefits significantly outweighing quantifiable increases in the regulatory burden for businesses. The quantifiable regulatory burden is estimated at \$0.275 million per year or \$2.750 million in total over ten years (expressed in present value terms), over maintaining the current regulatory framework (Option 1). The likely impacts of the preferred option arise primarily from the extra reporting requirements and the new mechanism to issue human biosecurity group directions to groups of people. The increased regulatory burden would be offset at least partly by savings due to the more nuanced human health risk management regime. However, it was not possible to estimate the quantum of these savings.

These proposed changes can only be implemented by the government amending the existing legislative scheme. Without the proposed legislative amendments, the Commonwealth's biosecurity framework would continue to be limited in its capacity to effectively secure the objectives of the Biosecurity Act. Australian society would continue to be at a heightened immediate risk of being exposed to COVID-19 or other novel communicable diseases through present and future commercial and cruise vessel operations. This risk has materialised multiple times with commercial vessels during the COVID-19 pandemic.

# Current setting

## Overview

All aircraft and maritime vessels arriving in Australian territory from overseas are subject to Australian biosecurity requirements to manage the risk of infectious human diseases entering Australian territory. Cruise ships in particular can provide an ideal environment for transmission of communicable diseases. They bring diverse populations, of unknown health status, into close proximity for many days. They move rapidly from one port to another, interfacing with local community members. Also, large numbers of passengers and crew members interact in the confined environment of cruise ships, so there is further potential for spread of communicable diseases.

These risks are managed by the Commonwealth primarily through the *Biosecurity Act 2015* (Biosecurity Act) and consistent with Australia's international rights and obligations under the *International Health Regulations (2005)*. States and territories have their own statutory frameworks for public health, including the emergency responses required to address issues such as the COVID-19 pandemic. Each of these jurisdictions also has a principal medical advisor. National responses to health emergencies, such as COVID-19, are coordinated through bodies such as the Australian Human Health Protection Principal Committee and the Chief Human Biosecurity Officer Forum.

## International Health Regulations

The *International Health Regulations (2005)* (IHR) are the key binding international legal instrument for preventing and responding to acute public health risks that have the potential to cross borders and threaten people worldwide. The IHR are designed to prevent the international spread of infectious diseases while avoiding interference with international traffic and trade. The IHR is binding on 196 countries across the globe, including all Member States of the World Health Organization (WHO). As a Member State of the WHO, Australia is obliged to comply with the IHR.

The IHR establishes a minimum standard for public health prevention, preparedness and response. These standards include activities and functions such as ship sanitation and points of entry (pratique). Australia has incorporated key IHR standards into domestic law, including at the national level through the Biosecurity Act and the *National Health Security Act 2007*.

## Biosecurity Act 2015

The Biosecurity Act commenced on 16 June 2016. It is co-administered by the Ministers responsible for the Agriculture and Health portfolios. The Act provides a range of powers for managing biosecurity risks to human health, including entry and exit screening, management of ill travellers, vector monitoring and control, and flexible emergency and preventative powers. It also gives effect to Australia's IHR obligations in relation to ship sanitation, points of entry, Public Health Emergencies of International Concern, and yellow fever vaccination.

Chapter 2 of the Biosecurity Act deals with managing risks to human health. That Chapter sets out a framework for the determination of listed human diseases by the Director of Human Biosecurity. The *Biosecurity (Listed Human Diseases) Determination 2016* lists eight human diseases including human coronavirus with pandemic potential. Powers available to manage the risk of listed human diseases entering, emerging, establishing or spreading in Australian territory include pratique requirements and the imposition of individual human biosecurity control orders (HBCO).

## Pratique

The Biosecurity Act provides for the grant of pratique. If pratique is not granted, goods are not permitted to be loaded or unloaded from, or persons to embark or disembark from, vessels or aircraft. An aircraft means any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface. A vessel means any kind of vessel used in navigation by water, for example a ship or yacht. The Act refers to two types of pratique, positive pratique and negative pratique.



### Positive Pratique

Ordinarily, most aircraft and vessels are granted pratique on their arrival in Australian territory by force of section 48 of the Biosecurity Act. This means that a decision is not required by a biosecurity officer before people can embark or disembark, and goods can be unloaded or loaded. Pratique will be granted to an aircraft or vessel by operation of the Act.

### Negative Pratique

The *Biosecurity (Negative Pratique) Instrument 2016* prescribes the following classes of aircraft or vessels for the purpose of negative pratique:

- Class 1 – aircraft for which disinsection measures have not been carried out
- Class 2 – aircraft or vessels where there is an individual with signs or symptoms or possible exposure to a Listed Human Disease, or a death onboard (as advised through a pre-arrival report or otherwise)
- Class 3 – non-commercial vessels, for example private yachts
- Class 4 – vessels that fail to submit a pre-arrival report.

If a vessel or aircraft falls into any of these categories, it will be subject to negative pratique under section 49 of the Biosecurity Act. If a vessel or aircraft is subject to negative pratique, it will not be able to disembark passengers or unload goods until a Biosecurity Officer affirmatively grants pratique.

## Compliance with pratique

The Biosecurity Act includes civil penalties for breaches of pratique obligations. The penalty applies to the operator of the aircraft or vessel. Section 21 defines operator of a conveyance to mean the body corporate or an unincorporated body responsible for the operation of the conveyance, that is the owner. If there is no body corporate and no unincorporated body responsible for operation of the conveyance, the person in charge of the aircraft or vessel is the operator.

As almost all cruise ships are commercially operated by crews, it is the operator's responsibility (that is, the body corporate or unincorporated body) to ensure the vessel's compliance. Therefore, in some cases, only the operator can be held responsible and liable to potential civil sanction where contravention of the pratique requirements in the Biosecurity Act is alleged.

## Human biosecurity control orders (HBCO)

A HBCO can be imposed on an individual if a Human Biosecurity Officer is satisfied the individual has signs or symptoms of a listed human disease or has been exposed to a listed human disease. A HBCO that is in force in relation to an individual may require the individual to comply with certain biosecurity measures. Those measures include vaccination, restricting the individual's behaviour and ordering the individual to remain isolated.

An individual may consent to a biosecurity measure included in a HBCO that is in force in relation to the individual. An individual who refuses to consent to such a measure (other than an isolation measure or traveller movement measure) is not required to comply unless a direction has been given by the Director of Human Biosecurity requiring the individual to do so.

HBCOs apply in relation to individuals – they cannot be applied to a group or class of persons. Consistent with the potentially intrusive scope of its powers and intrusion on personal rights and liberties, there is a very stringent test that must be met for it to apply. As HBCOs are applied to individuals, if more than one person has signs or symptoms or has been exposed to a listed human disease, then a separate HBCO is required for each individual.

## Pre-arrival reporting

Chapter 4 of the Biosecurity Act deals with managing biosecurity risks in relation to aircraft and vessels that enter Australian territory from outside Australian territory, including provisions for pre-arrival reporting. The human health pre-arrival reporting required by the Act provides the information required for the assessment and management of human health risks on aircraft and vessels. The grant of pratique is contingent on this assessment and civil sanctions apply for non-compliance with the reporting requirements. The reporting requirements are prescribed by the *Biosecurity Regulation 2016*.

Under section 193 of the Act, the operator of an aircraft or vessel must give a report that complies with the prescribed requirements (including as required by the *Biosecurity Regulation 2016*, details of any persons with signs or symptoms of a listed human disease) in the following circumstances:

- if it is intended that the aircraft or vessel enter, or if the aircraft or vessel enters into, Australian Territory, either on a flight or voyage that commenced outside Australian territory, or after being exposed to another conveyance while outside Australian territory; or
- it is intended that the aircraft or vessel be, or is, exposed to a conveyance that is subject to biosecurity control, or goods that are subject to biosecurity control and are of a kind prescribed by the regulations.

For vessels other than non-commercial vessels, the *Biosecurity Regulation 2016* requires the pre-arrival report to be submitted within 96 to 12 hours of estimated time of arrival at a First Point of Entry (as defined under section 18 of the Act). Different reporting times apply to other conveyances such as non-commercial vessels (for example, private yachts) and aircraft.

Section 194 of the Act requires operators of aircraft and vessels to rectify incorrect or incomplete reports by providing additional or corrected information to a biosecurity officer. However, if the human health status onboard a vessel changes after the pre-arrival report is submitted, the wording of the section does not provide a clear obligation to update information in a report. A person is liable to a fault-based (criminal) offence or a civil penalty if they fail to provide the information required under section 194.

# 1. What is the problem you are trying to solve?

## Overview

This Regulatory Impact Assessment (RIS) assesses the effectiveness of Commonwealth biosecurity legislation to address priority issues identified in the context of the COVID-19 pandemic. The emergence and global spread of the COVID-19 'once in a century' pandemic since early 2020 has tested Australia's human biosecurity systems in an unprecedented way. Significant public and parliamentary scrutiny has been focussed on the laws underpinning biosecurity, and in particular the ability of the Commonwealth to respond under the Biosecurity Act.

The berthing of the Ruby Princess cruise ship in Sydney on 19 March 2020 represented a significant human biosecurity issue. Reviews of the Ruby Princess incident identified key areas for targeted reform to the Biosecurity Act to provide a better management framework for the risks. These reviews include the NSW *Special Commission of Inquiry into the Ruby Princess Cruise Ship Incident Report* and the Inspector-General of Biosecurity's Review *Confidence testing for at-border delivery of critical human biosecurity functions - Ruby Princess cruise ship incident*.

The recommendations from these reviews and the lessons learnt through the pandemic response to COVID-19 have highlighted specific issues with the Biosecurity Act relating to:

- The operation of pratique provisions within the Biosecurity Act;
- Pre-arrival reporting obligations and the importance of accurate and timely human health assessments prior to arrival at a port; and
- Powers to manage the human health risks of groups of arriving passengers.



## Maritime vessels are a key risk pathway for infectious disease

International maritime vessels have continued to present a significant risk pathway for infectious disease entry to Australian territory, particularly in relation to cruise vessels. There have also been multiple incidents of COVID-19 infections involving crew on commercial vessels such as bulk carriers and livestock ships.

Data sourced from the department show that 1,020 positive cases of COVID-19 were detected in travellers arriving on commercial and cruise vessels from February 2020 to October 2020. The cases and types of vessels associated with the infections has been broken down in Table 1 below.

Vessel Class	COVID Cases
Cruise	935
Commercial	101
Non-commercial	1

**Table 1 – Number of COVID-19 cases by class of vessel as at June 2021**

The cases compounded the ongoing economic disruptions in Australia. To manage the cases, government interventions were required, resulting in disruptions that included state-wide lockdowns, national border closures and the banning of cruise vessels. These actions have negatively impacted industries by reducing their economic activity and inhibiting their ability to trade locally and internationally.

To understand the government response to these cases, it is important to recognise that the actions undertaken occurred within an ongoing government response in an evolving situation. In January 2020, prior to the events of the Ruby Princess, the Director of Human Biosecurity had determined ‘human coronavirus with pandemic potential’, including COVID-19, as a listed human disease, which enabled the implementation of additional COVID-19 screening requirements at First Points of Entry. The Australian Government subsequently advised self-isolation for all international travellers and banned the entry of foreign-flagged cruise vessels into Australian waters, with limited exceptions, from 18 March 2020.

## Key issues

### Pratique

Once a vessel has arrived at the port precinct at the first point of entry, and has been granted pratique, it cannot be revoked. In this situation, cargo can be unloaded, and passengers may disembark.

On the other hand, if pratique is not granted, no cargo can be loaded or unloaded, and no passengers can embark or disembark. There is no provision to grant pratique subject to conditions. When a human health concern (death or illness onboard) is notified through the pre-arrival report, the ship is in negative pratique.

To an extent this results in an ‘all or nothing’ outcome. Negative pratique is a fairly blunt and binary tool which does not permit a more tailored and nuanced approach to the management of risk which could be appropriate in certain circumstances. The human biosecurity risk managed by pratique rests primarily in people embarking on or disembarking a vessel. In doing so, they are potentially becoming exposed or exposing others to a listed human disease. When pratique has not been granted, the movement of all passengers and crew are affected, regardless of whether the presence of the risk factors are contained to a single deck or an even smaller area. Additionally, no loading or unloading of cargo can take place when the vessel has not been granted pratique, regardless of whether these actions would pose a human biosecurity risk. The current arrangements would be enhanced by allowing more flexible options to be available to target risk.

## Non-compliance with pratique requirements

Before pratique is granted, the operator of an aircraft or vessel must not allow anything to be loaded or unloaded or any person to embark or disembark the aircraft or vessel. There are civil penalties for any breaches of this requirement. But as noted above, these penalties only apply to the operator of the aircraft or vessel, which in the case of commercial vessels, the operator would generally be a corporation, which may be located overseas.

As the Inspector-General of Biosecurity reported, it appears that any passenger or crew member, who knowingly disembarks a vessel that is in negative pratique, may not be in breach of the Biosecurity Act. Further, the Inspector-General of Biosecurity noted that the person in charge of an aircraft or vessel would also not be responsible for any non-compliance with negative pratique requirements.

the current framework of the Biosecurity Act does not impose a penalty on the person in charge of an aircraft or vessel for any breaches of pratique requirements, such as passengers disembarking before pratique is granted.

## Pre-arrival reporting

The ability of officers to make decisions about granting pratique depends on access to reliable and up-to-date information on the health of passengers and crew aboard vessels.

Section 193 of the Biosecurity Act requires the operator of an aircraft or vessel entering Australia to provide a pre-arrival report. The pre-arrival report facilitates a preliminary biosecurity assessment of the vessel or aircraft and any people onboard, including passengers and crew. The pre-arrival report is important to the determination of the vessel's pratique status. If an illness is identified in the report, the vessel enters Australian territory with negative pratique and is not permitted to disembark passengers or load or unload cargo, unless pratique is subsequently granted by a biosecurity officer.

For cruise ships, the pre-arrival report must be provided between 12 and 96 hours before the estimated time of arrival at an Australian port, under the requirements in the *Biosecurity Regulation 2016*. This gives sufficient time for the information to be assessed.

As the pre-arrival report may be provided up to 96 hours before the ship berths, there can be significant changes to the health status of passengers in the period before berthing. Given the large numbers of passengers and crew on board cruise ships, it is possible for there to be significant increases in the number of persons with a listed human disease risk or significant changes in the types of reported symptoms from the time the report is submitted.

Under section 194, the vessel operator is required to give additional or corrected information once they become aware that the information included in the pre-arrival report was incomplete or incorrect. Both the NSW Special Commissioner and the Inspector-General of Biosecurity observed that section 194 is limited in its application. On its face, it requires updated information only where the information on the pre-arrival report could be considered 'incomplete or incorrect' at the time it was submitted. The reviews considered it open to contention that illness onboard a vessel that becomes evident after submitting the pre-arrival report does not trigger the reporting requirement under s 194.

As noted in the NSW Commission report at paragraph 4.42:

*Section 194 of the Biosecurity Act requires vessel operators to update the report if they become aware that the information in the report is incomplete or incorrect. Section 194 is expressed in a way which creates an obligation to correct a report which is found to be incomplete or incorrect. The section does not convey a clear obligation to update case numbers if and when those case numbers increase: i.e. the number of cases reported at a specified time does not make that report "incomplete or incorrect" when the number of cases later increases. Consequently, it is doubtful whether updating is required by s 194.*

As it stands, there appears to be no requirement to update the information if there is illness or death after the pre-arrival report is provided. Both reviews considered this to be a significant gap in the current human biosecurity reporting requirements and recommended that it be mandatory to provide updated human health information after submission of a pre-arrival report.

## Enforcement of Pre-arrival Reporting

There may be commercial pressures on the master of a vessel to not report illnesses in certain circumstances. While the Inspector-General of Biosecurity considered that most vessel masters comply with Australia's requirements by correctly declaring illness onboard vessels, there were some inconsistencies in reporting:

*On reporting signs or symptoms of a Listed Human Disease, the vessel is subject to negative pratique and therefore is not permitted to disembark travellers (commercial cruise ship) or to load or unload cargo (commercial cargo vessel). During his fieldwork, the Inspector-General noted biosecurity officers' concerns that a vessel may avoid reporting illness onboard in the vessel's Pre-arrival Report. Information the Inspector-General later received from Agriculture confirmed several instances where vessel masters either did not report any illnesses or reported illness just before berthing the vessel.*

If an operator does not give a pre-arrival report as required by the Biosecurity Act, criminal and civil penalties apply under section 193 of the Act. Sections 532 and 533 of the Biosecurity Act also provide civil penalties if a person provides false or misleading information or documents. These are additional to the offence provisions set out in the Criminal Code for false and misleading information or documents.

## Human biosecurity control orders (HBCOs)

One way in which the Biosecurity Act seeks to actively manage identified human biosecurity risks is through human biosecurity control orders (HBCOs). A HBCO can only be issued where an officer is satisfied that an individual has signs or symptoms of a listed human disease or has been exposed to a listed human disease. Part 3 of Chapter 2 of the Act sets out a range of biosecurity measures that may be imposed by a HBCO, including restricting the individual's behaviour, requiring an individual to undergo an examination and wearing protective clothing and equipment. Penalties apply for failing to comply with a HBCO. As noted above, HBCOs apply to individuals and not to groups of people. To date, no HBCOs have been imposed under the Biosecurity Act.

The Act only allows for HBCOs to be imposed on individuals. It is feasible to use this mechanism for a small number of arriving passengers and crew but impractical for larger groups of people. The NSW Special Commissioner described the administrative processes for HBCOs as being 'fairly demanding' and impractical to issue to a large number of people. For example, the Ruby Princess cruise ship, which docked at the Port of Sydney on 19 March 2020, carried about 2,700 passengers and 1,000 crew onboard. As noted above, about 40% of the Australian passengers on the ship developed COVID-19. The Inspector-General of Biosecurity similarly stated that it would be impractical, if not impossible, to issue HBCOs to every passenger and crew member onboard the Ruby Princess, leading to a higher risk of disease transmission.

Both the NSW Special Commissioner and the Inspector-General of Biosecurity recommended that consideration be given to amending the Biosecurity Act to enable HBCOs to be issued to a group of people.

## Affected businesses, community organisations or individuals

The COVID-19 pandemic has effectively brought the cruise industry to a standstill in Australia with significant economic costs to cruise ship companies and to the Australian economy. Addressing the problems outlined above will be a step towards allowing the resumption of cruise services in a COVID-19 safe manner.

### *Cruise Industry*

Cruise Lines International Association, Australasia (CLIA) is composed of more than 60 of the world's major cruise lines and serves as a non-governmental consultative organisation to the International Maritime Organization (IMO), an agency of the United Nations. According to CLIA, Australia's ongoing cruise suspension had cost the local economy an estimated \$6 billion in losses and put more than 18,000 jobs in doubt. (CLIA News, *Australia's plan needs to include cruising*, 2 July 2021).

### *Tourism Industry*

A staged and safe resumption of the cruise sector will boost local economies, including those industries directly and indirectly involved with the cruise industry, such as suppliers, travel agents, and the hospitality sector.

### Ports

Reducing potential exposure of port staff to COVID-19 is a key issue for the Maritime Union of Australia, who represent waterside workers, seafarers, port workers, professional divers and office workers associated with ports. Once cruises resume, consultation will be required with port authorities regarding the treatment of all cruise vessels arriving in Australia. There is potential for reduced berthing capacity for other vessels seeking to arrive in port, and for extended periods of time, when a cruise vessel is identified as having a potential relevant infectious disease risk on board.

### All Other Industries

Addressing the identified problems will help protect Australia's industries from being exposed to COVID-19 biosecurity risks, which will assist Australia's economic recovery and support increased confidence in Australia's business sector.

## 2. Why is Government action needed?

### Objectives

The regulatory actions being assessed in this RIS address the risk of listed human diseases entering Australian territory through international vessel and aircraft arrivals and would apply in the context of the current COVID-19 pandemic, while also providing flexibility to manage infectious disease risks that Australia may face in the future. Specifically, the objectives of the reforms being assessed are to:

- better support human health risk assessments and operational responses to the threat of COVID-19 and other listed human diseases on conveyances (vessels and aircraft) entering Australian territory.
- support the national COVID-19 economic recovery, including steps towards the resumption of the cruise ship industry in Australia, and shoring up the human health biosecurity framework into the future.

### Human Health Risks

The Biosecurity Act strengthened and modernised Australia's biosecurity system. The Biosecurity Act provides a framework to manage biosecurity threats to plant, animal and human health in Australia and its external territories. The objects of the Biosecurity Act relevant to human health include:

- managing the risk of contagion of a listed human disease or certain other serious infectious human diseases;
- managing the risk of listed human diseases or any other infectious human diseases entering Australian territory or a part of Australian territory, or emerging, establishing or spreading in Australian territory or a part of Australian territory; and
- managing human biosecurity emergencies.

The Act provides a range of powers to manage unacceptable biosecurity risks on vessels and aircraft arriving at and entering into Australian territory for the protection of health of all Australians. These powers include entry and exit screening of international travellers, management of ill travellers, and flexible emergency and preventative powers.

### Supporting Economic Recovery

Australia receives a significant economic gain from the cruise industry. In the 2018-19 financial year, the industry generated a net economic output into the Australian economy of about \$5.2 billion from indirect revenue and direct spending. This

economic uplift, in turn, created 18,135 jobs (both direct and indirect) for Australians. There are significant benefits to the cruise industry if it can resume business in a 'COVID-safe' manner, aligned with the reduction in public health risk. There would also be benefits to Australia's economy and the health and safety of its inhabitants and travellers to Australia through a strengthened human biosecurity risk framework.

## 3. What policy options are you considering?

### 3.1 Option 1 – Status Quo

The Biosecurity Act includes an existing scheme for managing human biosecurity risks. The scheme allows Biosecurity Officers to refuse to grant pratique under Chapter 2 of the Act (relating to the human health biosecurity risk management) where risks of listed human diseases are not suitably managed, and to impose human biosecurity orders (HBCOs) to manage individuals with signs or symptoms of or exposure to listed diseases in certain circumstances. Option 1 is to continue to administer the scheme set out in the Biosecurity Act without legislative changes, including changes to delegated legislation.

The key features of the scheme (set out in detail in the Current Settings section above) include:

- Pratique allows things to be unloaded from or loaded on to, and persons to disembark from or embark, aircraft or vessels. Once granted, pratique cannot be revoked. Pratique can be granted by force of the Biosecurity Act (positive pratique) unless the vessel or aircraft is in a class specified by the Director of Human Biosecurity under the powers in subsection 49(1) of the Act (negative pratique). Where negative pratique applies, the vessel or aircraft must be assessed as complying with specified requirements before a biosecurity officer will grant pratique.
- Current settings for negative pratique are set out in the Biosecurity (Negative Pratique) Instrument 2016 administered by the Department of Health.
- Human Biosecurity Control Orders may be put in force in relation to an individual and may require the individual to comply with certain biosecurity measures.
- Requirements for pre-arrival reports to be given in relation to aircraft or vessels that enter or intend to enter Australian territory from outside Australian territory. The reports include information for the purpose of assessing the level of biosecurity risk associated with the aircraft or vessel, including to human health.
- Human biosecurity control orders may be imposed on a person where an individual assessment indicates that they have signs or symptoms of a listed human disease, and may require the individual to comply with certain biosecurity measures.
- A range of compliance and enforcement power, and criminal and civil penalties for non-compliance with pratique and pre-arrival reporting requirements and human biosecurity control orders.
- The Governor-General may make a human biosecurity emergency declaration if the Health Minister is satisfied that the special powers applying to emergencies in the Biosecurity Act are needed to deal with a human biosecurity emergency.

Under present arrangements, state and territory public health emergency powers, rather than individual human biosecurity control orders, are being utilised to deal with large numbers of crew or passengers seeking to disembark from arriving international vessels.

The status quo includes reforms to processes and procedures that have and are being implemented based on learnings from the COVID-19 pandemic. The reviews arising from the Ruby Princess incident made recommendations relating to the policies,

procedures and responsibilities of relevant Federal and State agencies that do not require regulatory change and in some cases have already been implemented. For example, the Inspector-General of Biosecurity's report made 42 recommendations of which the department accepted 38 and noted 4. Many of these recommendations accord with changes and reforms the Government has undertaken during 2020 and 2021 (Agency response to Inspector-General of Biosecurity). Reform actions taken to date include:

- Institution of regular meetings at ports around Australia with port stakeholders, including state and territory health departments, to improve awareness of roles and responsibilities.
- Engagement of experts to redevelop the department's maritime human health instructional materials.
- A regulatory design assessment of pratique.
- Adjustment to human health reporting questions within the Maritime Arrivals Reporting System.
- Establishing formal protocols for communicating with human biosecurity officers and port stakeholders about human health risks and pratique.

## 3.2 Option 2 – Emergency powers and legislative instruments

Option 2 would seek to use existing legislative authority to manage relevant human biosecurity risk, including legislative instruments and the *Biosecurity Regulation 2016* and the *Biosecurity Human Health Regulation 2016*.

A short-term solution could include the appropriate use of emergency powers while the human biosecurity emergency is still declared.

The Biosecurity Act provides special powers in Part 2 of Chapter 8 for dealing with emergencies involving threats or harm to human health on a nationally significant scale. These are called human biosecurity emergencies. The Governor-General may make a human biosecurity emergency declaration for a specified period of time if the Health Minister is satisfied that the special powers in this Part are needed to deal with a human biosecurity emergency.

If the Governor-General declares a human biosecurity emergency, the Health Minister may exercise special powers under this Part to deal with a human biosecurity emergency, subject to limits and protections, including to give directions or determine requirements under the powers of sections 477 and 478. The exceptional powers are enlivened by the Governor-General declaring an emergency and allow the Health Minister to determine requirements and give directions during the emergency period to manage human biosecurity risks where it is considered necessary under the relevant provisions of the Act.

Under Option 2, emergency determinations could be made, to the extent necessary and appropriate to appropriately manage the risk of contagion of listed human diseases and the risk that such a disease might enter, emerge, establish or spread in Australian territory. However, this option is limited to the context of a declared human biosecurity emergency. It would not provide the framework for the Government's COVID-19 recovery plan that would support long-term management of human health risks that may arise from the cruise vessel industry, in a manner that provides certainty and consistency for industry.

## 3.3 Option 3 – Amendments to the Biosecurity Act

Option 3 would seek to amend the Biosecurity Act and associated legislative instruments to address the identified risk of listed human diseases entering Australia through international vessel arrivals.

### Independent reviews recommend change to the Biosecurity Act

The proposals in Option 3 are informed by recommendations arising from several reviews:

- On 15 April 2020, the Governor of New South Wales referred a Special Commission of Inquiry into the voyage of the Ruby Princess. The report included recommendations to amend the Biosecurity Act- specifically recommendations at para 2.22 – 2.23 (See Appendix A).

- The Inspector General of Biosecurity's report *Confidence testing for at-border delivery of human biosecurity functions- Ruby Princess cruise ship incident* published on 29 April 2021 - specifically recommendations 19 - 22 and 24 (see Appendix B).
- The Department of Agriculture, Water and the Environment commissioned an independent regulatory design assessment into pratique which was finalised in November 2020.

These reviews raise concerns that issues identified through the arrival of the Ruby Princess could apply to other cruise ships, in other ports, or for entirely different biosecurity risk pathways. Of particular concern are circumstances where the probability of occurrence may be low, but the consequences of biosecurity failure are potentially large or extreme.

Option 3 includes a package of changes to the Biosecurity Act developed following analysis of the issues and recommendations raised by these reviews. The specific amendment proposals are as follows:

### Multiple pre-arrival reporting requirements

- Amend section 193 of the Act to insert a regulation making power to require other pre-arrival reports to be submitted by an aircraft or vessel as prescribed by the regulations. The regulations may then prescribe different circumstances for giving other reports by different classes of aircraft or vessel. This will provide flexibility to respond to risks based on the class of conveyance and the circumstances relating to human health.
- For example, the regulations could provide for cruise vessels to submit two pre-arrival reports, with the second report being submitted closer to the time of arrival. This will allow for a more accurate and timely assessment of biosecurity risks to be conducted.

### Requirements to update pre-arrival reporting

- Amend section 194 of the Act so that, in addition to the requirement to update the pre-arrival report if the report was incorrect or incomplete at the time it was submitted, further information would also be required to be given in circumstances prescribed by the regulations.
- Making provision for this in the regulations will offer appropriate flexibility to configure pre-arrival reporting to respond to the evolving and dynamic context of human biosecurity risks in the future.

### Expand negative pratique obligations

- Extend the application of requirements to comply with negative pratique obligations to the person in charge of a vessel or aircraft. This would more appropriately reflect responsibility for the vessel or aircraft and more effectively target obligations for compliance.
- To deter non-compliance with the requirements, increase the existing civil penalty that applies to a vessel operator and insert a new civil penalty provision for the person in charge of the vessel or aircraft.

### Create a power to issue directions to apply to a group of persons

- Create a human biosecurity group direction (HBGD) mechanism that permits a Human Biosecurity Officer or Chief Human Biosecurity Officer to issue directions to a class of people arriving in Australian territory where the officer is satisfied one or more persons in that class has signs or symptoms of, or may have been exposed to, a listed human disease. The direction could be applied to passengers and crew arriving by either maritime or air pathways. The concept of being 'exposed to' a listed human disease is already defined in section 17 of the Act.
- The direction could be applied to individuals in a specified group, including individuals who are or were on a vessel or aircraft in either maritime or air pathways or in close proximity to the place where it landed or moored.
- The HBGD is intended to provide an effective and efficient Commonwealth mechanism for the preliminary assessment and management of human biosecurity risk. It would also address the lack of Commonwealth power to



prevent the embarkation or disembarkation of passengers or the loading or unloading of goods after pratique has been granted.

- The measures the Chief Human Biosecurity Officer and Human Biosecurity Officer would be able to require individuals within the class of persons to comply with could include similar measures to those available for human biosecurity control orders in Division 3 of Part 2 of Chapter 2 of the Biosecurity Act and measures relating to disembarking passengers or crew and unloading or loading goods.
- Individuals within the class would be provided with notice of the HBGD in the manner prescribed by the regulations so that it can be best tailored to the circumstances of the aircraft or vessel. It is also proposed to insert a mechanism for a Human Biosecurity Officer, Chief Human Biosecurity Officer or Biosecurity Officer to require the person in charge of the aircraft or vessel to provide notice of the group direction to the class of individuals on board.
- Careful consideration of potential implications to human rights and other relevant legal obligations and issues will be given to ensure the new mechanism is appropriate and proportionate to the risk.

## 4. What is the likely net benefit of each option?

This section of the RIS discusses the benefits and costs for each of the three policy options being considered. These costs include the estimated regulatory cost burdens, with the estimate based on anticipated actions taken by businesses, individuals, and community organisations to comply with each of the proposed policies. The regulatory cost burden estimates have been developed using the guidance and tools of the Office of Best Practice Regulation.

This section further discusses relevant qualitative benefits and impacts, such as how well each option manages risks to human health and the anticipated benefit to the broader Australian economy, where relevant.

The cost of not complying with regulations, also known as enforcement costs, are not factored into regulatory cost burden estimates. The costs included in this RIS are in Australian dollars unless indicated otherwise and represent present value.

### 4.1 Option 1 – Status Quo

#### 4.1.1 Benefits

Option 1 would continue to provide a regulatory framework for Australia's management of biosecurity risk, in accordance with the objects of the Biosecurity Act. This includes pre-arrival and at-border powers for managing what is referred to in practice as 'human biosecurity', that is protecting human health from the risks posed by the entry, emergence, establishment or spread of infectious human diseases in Australia.

The Biosecurity Act provides a modern framework to address the increasingly challenging and complex biosecurity risks due to increasing number of passengers and cargo entering Australia (Biosecurity Bill 2014 Explanatory Memorandum). The benefits of the current framework are stated broadly in the former Department of Agriculture's Regulatory Performance Framework 2018-19:

The legislation is designed to be flexible and responsive to changes in technology and future challenges. It promotes a shared responsibility between government and industry, provides a modern regulatory framework, reduces duplication and regulatory impacts, and allows for current and future trading environments.

As outlined in the Current Settings section, the status quo provides for a pratique mechanism and pre-arrival reporting that provides some level of protection for managing human health risks. The positive pratique mechanism continues to provide an efficient means for managing arrivals of aircraft and vessels where no public health issues are identified.

The status quo includes changes and reforms to operational policies, practices and processes that the Australian Government has implemented during 2020 and 2021. These changes are expected to bring about improvement in the process for managing biosecurity risks at the border, even absent legislative change. For example, these changes will provide increased understanding of the roles and responsibilities of Commonwealth and state and territory agencies, improved training material for Biosecurity Officers and enhanced health reporting through the Maritime Arrivals Reporting System.

As Option 1 does not involve any change to regulation, there is no change to the regulatory burden on businesses, community organisations or individuals is anticipated.

#### 4.1.2 Impacts

Under Option 1, the shortcomings in the existing regulatory framework identified in the problems section would remain. The binary nature of pratique, lack of up-to-date health reporting, and inability to provide directions to large groups of people results in the system lacking the flexibility to manage large numbers of passengers and crew with potential listed human diseases onboard foreign commercial vessels seeking permission to enter Australia. These impacts are discussed further below.

During the COVID-19 pandemic, a number of commercial vessels in Australian waters have had crew with COVID-19 onboard. These have included cargo vessels, livestock carriers and tankers. In many cases state and territory public health emergency powers have been used to restrict crew movement.

According to the Inspector-General of Biosecurity:

*Currently, state emergency powers, rather than pratique or Human Biosecurity Control Orders, are being utilised to prevent crew or passengers from disembarking arriving overseas vessels. In assessing the effectiveness of the management of arriving vessels using pratique, we must consider an environment without reliance on state and territory emergency powers. [Inspector-General of Biosecurity, p. 86]*

While these emergency powers are being used during the COVID-19 pandemic, the reliance on state or territory emergency powers leaves a gap in managing human biosecurity risk at times when the state emergency powers are not in operation. Under Option 1, this gap in managing human biosecurity risk when the state or territory emergency powers are not in operation would remain. While these emergency powers are being used during the COVID-19 pandemic, the reliance on state or territory emergency powers leaves a gap in managing human biosecurity risk at times when the state or territory emergency powers are not in operation. Emergency powers also vary across jurisdictions, potentially creating some inconsistency.

#### **Negative Pratique**

Under the current legislation, a vessel which has negative pratique status is not able to disembark individuals unless given permission to do so. This results in all passengers and crew not being allowed to disembark until the biosecurity risks are appropriately managed, regardless of whether the issue was due to an isolated or containable incident. The costs associated with negative pratique under the current legislation include costs for both individuals aboard the vessel and businesses onshore. These include the following:

- Individuals: personal cost to passengers (and in some instances crew) required to remain on the vessel for longer than anticipated, e.g., loss of wages, reorganising travel, travel cancellation costs and missed connections.
- Business: on-shore businesses who rely on tourism dollars are negatively affected when negative pratique occurs, through loss of income, for as long as the vessel has negative pratique status.
- The cost of delays to cargo being unloaded from the vessel.

- Costs to ship owners and other business due to delays resulting from the period in which a vessel remains in negative pratique, along with delays to other ships waiting to dock in part.

The above costs are not reliably quantifiable as the actual dollar cost would be reliant on a variety of factors, such as how frequently vessels are subject to negative pratique, the number of passengers affected and the length of delay onboard. The range of businesses affected by passengers not being allowed to disembark could include hospitality, retail, accommodation, tourist attractions and this is hence also not reliably quantifiable.

The magnitude of the regulatory burden imposed by negative pratique is driven by the fact that the entire vessel is subject to negative pratique, i.e., no passengers are allowed to be disembarked, even in cases where the disembarkation of the majority of the passengers would pose no significant risk of transmission of a listed human disease.

### **Pre-Arrival Reporting (PAR)**

Under the current legislation, the time at which a PAR must be submitted for a cruise vessel is 96-12 hours prior to the estimated time of arrival at the first point of entry. Given the large numbers of passengers and crew on board a cruise vessel, it is possible for there to be significant increases in the number of persons with a listed human disease risk or significant changes in the types of reported signs or symptoms, from the time at which a PAR must currently be submitted (up to 96 hours before arrival) to when the cruise vessel arrives in Australian territory.

Under the status quo, extra human health reporting and risk assessment criteria cannot be enforced, meaning biosecurity officers do not have the most up-to-date information when deciding to grant pratique. In light of the ongoing pandemic, PARs under the status quo are insufficient to appropriately manage exposure to listed human diseases. The Australian community will therefore continue to be at a heightened risk of exposure to COVID-19 and other listed human diseases through commercial and cruise vessel and aircraft operations.

### **Additional reporting**

Currently section 194 of the Biosecurity Act requires updates to the pre-arrival report if the report was incorrect or incomplete at the time it was submitted. Therefore, in the circumstance where case numbers increase, there is no clear legal obligation to update the information after the report was submitted if the numbers were correct at the time they were submitted. This means biosecurity officers may not have the most up to date information available to manage biosecurity risks posed by the aircraft or vessel.

In summary, the option of maintaining the status quo is not attractive due to the risk of listed human diseases, particularly COVID-19, entering into Australian territory through international vessel arrivals. Without the implementation of the proposed legislative amendments to the Act as contemplated under Option 3, the Commonwealth's human biosecurity legislative powers remain limited, as identified and discussed above.

### **Compliance with pratique**

Under the status quo, only the operator is subject to penalties for non-compliance with pratique requirements in the Biosecurity Act. The current framing has the consequence that a person in charge of a vessel or aircraft is not liable to a civil penalty for contravening pratique requirements. The legislation under the status quo thus lacks an effective incentive to ensure the person in charge of the vessel or aircraft complies with pratique requirements, as that person is not accountable for any breaches such as passengers disembarking before pratique is granted.

### **Human Biosecurity Control Orders**

The status quo allows for human biosecurity control order to be imposed on individuals only. This is feasible for a small number of arriving passengers and crew but impractical for larger groups of people. The Ruby Princess cruise ship, which docked at the Port of Sydney on 19 March 2020, carried about 2,700 passengers and 1,000 crew onboard. Under the status quo, it would be impractical, if not impossible, to issue HBCOs to every passenger and crew member onboard the Ruby Princess, leading to a higher risk of disease transmission.

## 4.2 Option 2 – Emergency powers and legislative instruments

### 4.2.1 Benefits

Option 2 aims to use existing legislative authority to manage the relevant human biosecurity risk, including legislative instruments and the *Biosecurity Regulation 2016* and the *Biosecurity Human Health Regulation 2016*.

This option should allow for relevant human biosecurity risks to be better managed than under the status quo. This would occur with the targeted use of emergency powers, provided that a human biosecurity emergency has been declared.

This option could potentially be quicker to implement than amending the current legislation as it allows the Health Minister flexibility to exercise powers relevant to the specific circumstances, subject to the safeguards set out in the Biosecurity Act. The emergency provisions provide broad powers to manage human health emergencies.

A number of the problems identified by this RIS could be addressed to some extent under Option 2. When a human health emergency has been declared, human biosecurity emergency determinations could be created to address the need for further pre-arrival reporting or requiring the provisions of further information, where relevant. These determinations could be targeted to particular types of vessels or at all conveyances, depending on the identified risks.

It is also worth noting that any improvements to the Commonwealth's ability to manage the outbreak of a listed human disease could result in at least the partial reopening of the Australian cruise industry. Under Option 2, it could be expected that those benefits are partially realised depending on the powers enacted under this option. Limits on emergency powers, such as only applying to declared listed human diseases and ceasing at the end of the human biosecurity emergency, restrict the benefits of this option to periods of declared emergencies.

Factors such as the extent to which the jobs that existed previously will be filled again, and the speed with which the industry will return to pre-pandemic levels, are difficult to estimate. It is likely that the extent to which Option 2 contributed to a reopening of the cruise industry would be limited, especially without the ability to issue group orders such as the Human Biosecurity Group Directions proposed under Option 3.

Refer to Appendix D for more information regarding the size of the Australian cruise industry, prior to the current pandemic.

### 4.2.2 Impacts

Despite the benefits identified above, this option does not fully address identified issues relating to preparedness for future emergence of novel illnesses and pandemics.

Option 2 will lead to a more complex legislative framework than Option 3. It may generate uncertainty for regulated industries and for the interaction of Commonwealth agencies with state and territory counterparts, leading to delay and other costs. Determinations made by the Health Minister may be made quickly and the flexibility to adapt the determinations to each circumstance also means there is uncertainty for business. This option would also need to be implemented in a manner that is consistent with the use of state and territory health emergency powers for the management of public health risks. An inherent weakness of excessive reliance on state powers is that differences between jurisdictions lead to inconsistency and complexity, and they may only be available during emergencies. While these emergency powers are being used during the COVID-19 pandemic, the reliance on state and territory emergency powers leaves a gap in managing human biosecurity risk at times when the state and territory emergency powers are not in operation. Under option 2, this gap in managing human biosecurity risk consistently across all jurisdictions in Australia when only some of the state and territory emergency powers are in operation would remain.

Parliamentary consideration of the exercise of executive power in this area of national significance and concern may also be a matter for consideration, in particular the use of executive power during a declared human biosecurity emergency.

Any actions proposed under this option will only be available in the case of a declared emergency. The emergency powers therefore do not allow human biosecurity risks for listed human diseases to be effectively managed outside of a declared emergency. Examples may include a minor or early outbreak of a listed human disease, where it would be inappropriate to declare a human biosecurity emergency. In many cases, Biosecurity Officers and Human Biosecurity Officers will be limited to

those options available to them under the status quo. This stands in contrast with Option 3 which provides officers with additional flexibility at any time a human health risk arises.

The declaration of a human biosecurity emergency is at the Health Minister’s discretion and can vary from one emergency declaration to another. The regulatory burden imposed by these events can vary greatly as it is based on the impact and duration of such a declaration. This leaves a significant level of uncertainty with affected businesses, individuals, and community organisations.

As outlined above, Option 2 is superior to the status quo in that it partially addresses some of the problems identified in this RIS, for example by allowing for the creation of human biosecurity emergency determinations to address the need for additional pre-arrival reporting. This power is only available when a human health emergency has been declared.

This option does not address some of the problems identified above, including: the power to issue a direction to a group of people; and application of pratique obligations to reflect responsibility and risk more appropriately and to deter non-compliance.

### Regulatory burden estimate

Table 2 below presents a matrix mapping the elements of option 2 against the segments expected to incur an additional regulatory burden as a result of this option.

Proposed Determination	Businesses	Individuals	Community Organisation
Tailor direction to the type of vessels, such as cruise vessels			
Multiple pre-arrival reporting requirements	X		
Requirements to update pre-arrival reporting	X		

**Table 2 - Anticipated Regulatory Burden for Option 2, mapped against Segments**

A regulatory burden estimate was quantified where the underlying cost drivers could be determined with a relative level of certainty. To this extent, an estimate was calculated for the proposed amendments relating to “Multiple pre-arrival reporting requirements” and “Requirements to update pre-arrival reporting”. This was quantified and is presented in Table 3 below. This assumes that the legislative requirements for pre-arrival reporting could be supplemented through a determination to require further reporting. These costs would only be incurred during a declared emergency, as the determination would have no effect once the emergency ended.

Table 6 below presents the quantifiable impacts, derived using the Regulatory Burden Measurement Framework.

Change in average annual regulatory costs (\$ million)				
Proposed amendment	Individuals	Business	Community organisations	Total change in cost
Multiple pre-arrival reporting (sea pathway)		(\$ 0.153)		<b>(\$ 0.153)</b>
Updated information reporting (Sea pathway only)		(\$ 0.003)		<b>(\$ 0.003)</b>
<b>Total, by sector</b>	-	<b>(\$ 0.156)</b>	-	<b>(\$ 0.156)</b>

**Table 3 – Option 2 Regulatory Burden Estimate**

The data and assumptions underpinning the regulatory burden estimate outlined in Table 3 above, are presented in Appendix C below.

## 4.3 Option 3 – Amendments to the Biosecurity Act

### Overview

As noted at section 3.3 above, Option 3 proposes the following amendments to the Biosecurity Act:

	Proposed Amendments
1	Multiple pre-arrival reporting requirements
2	Requirements to update pre-arrival reporting
3	Expand negative pratique obligations
4	Create a power to issue directions to apply to a group of persons

**Table 4 – Proposed legislative amendments**

Section 4.3.1 below highlights the key benefits that would be derived from the enactment of these legislative amendments. The amendments aim to address the risk of listed human diseases entering Australian territory through international vessel arrivals and would apply in the context of the current COVID-19 pandemic, while also providing flexibility to manage infectious disease risks that Australia may face in the future. Section 4.3.2 focusses on the costs, quantifiable or otherwise, associated with adopting the proposed changes.

### 4.3.1 Benefits

#### Protection of public health

##### *Flexibility afforded to Human Biosecurity Officers (HBOs)*

The Act currently provides a framework to manage risks to human health through the imposition of a human biosecurity control order (HBCO). This order can be imposed on individuals only and is therefore impractical when assessing and managing the human health risks for a group of people.

The potential amendments under Option 3 give the Commonwealth a mechanism to implement biosecurity measures to assess and manage listed human disease risks involving a group of individuals whether or not pratique has been granted. In particular, the human biosecurity group direction (HBGD) mechanism under Option 3 will grant flexibility by allowing for the assessment and management of human health risks for a group of people such as on a large cruise vessel, or the crew of a commercial vessel. It will therefore allow for some passengers and crew to be disembarked, as well as cargo to be loaded and unloaded, by avoiding negative pratique when such a highly restrictive measure is not necessarily the most appropriate course of action.

The HBGD also fills a current gap in Commonwealth power to manage the human biosecurity risk of a group of people, and to prohibit passengers from embarking or disembarking after pratique has been granted. This significantly reduces the risk of a listed human disease entering the wider community due it not being detected before pratique was granted.

Compared to the powers currently available, the potential HBGD mechanism will lead to a reduced regulatory burden (in a specific case), as only one direction is needed, whether it relates to a group (for example all passengers on a specified deck of the vessel, or everyone on board the vessel). Currently, a direction is issued on an individual basis.

Utilising the HBGD will lead to some costs, as discussed in section 4.3.2. The additional flexibility provided by the HBGD should ensure that these costs are reduced compared to the status quo. Under current legislation the listed human disease risk would have been contained either by restricting the movement of the entire vessel (under negative pratique), or by managing the affected group by ordering individual Human Biosecurity Control Orders (HBCO). As noted above, this is not feasible when large numbers of passengers or crew are involved.

Option 3 provides for a more nuanced human health risk management regime in which some level of disembarkation of passengers and loading and unloading of goods can occur according to the assessment of risk. This would maximise the

flexibility afforded to Biosecurity Officers and Human Biosecurity Officers, thereby reducing the regulatory burden on individuals, when compared to the existing application of negative pratique requirements.

#### *Additional Pre-Arrival Reporting, including updated pre-arrival information*

Option 3 includes multiple pre-arrival reporting to be provided by aircraft and vessels, which can be tailored to different types of conveyances, such as cruise ships, and at different times.

This would ensure more timely and accurate human health information is available, to better enable Biosecurity Officers to identify, assess and manage biosecurity risks.

In addition to multiple pre-arrival reporting, Option 3 will also require further information to be provided, for example where additional passengers are identified as having signs or symptoms of a disease after the pre-arrival report is submitted. This obligation represents an important mechanism to enable biosecurity officers to receive and assess up-to-date information after the pre-arrival report has been submitted.

Making provision for this in the regulations will offer flexibility to configure pre-arrival reporting settings to appropriately respond to biosecurity risks in the future.

#### *Improvements in application of Pratique (including Negative Pratique)*

Option 3 aims to deter non-compliance with pratique by improving enforcement and compliance mechanisms. The requirement to comply with negative pratique obligations will be extended to also include the person in charge of a vessel or aircraft (instead of only the operator). This would more appropriately reflect responsibility for the vessel or aircraft and more effectively target obligations for compliance.


To further deter non-compliance with requirements, the existing civil penalty that applies to an operator would be increased, and a new civil penalty provision would be inserted for the person in charge of the vessel or aircraft.

#### **Benefits to the Broader Australian Economy and the Australian Cruise Industry**

A key benefit expected to materialise as a result of the proposed amendments is the support it lends toward the recovery of the cruise industry, to pre-pandemic levels. This includes refilling the more than 18,000 jobs that existed at the end of the 2018-19 financial year and building back up to the \$5.2 billion in annual economic output that was generated directly and indirectly by the industry.

### **Benefits to the Broader Australian Economy:**

 **\$5.2 billion in economic output (direct & indirect)**

 **18,135 total jobs created (direct & indirect)**

This is described in more detail in Appendix D - Benefits to the Broader Australian Economy and the Australian Cruise Industry.

## **4.3.2 Impacts**

The elements of Option 3 are targeted at the problems outlined in Chapter 1 and specifically informed by the recommendations from the independent reviews (see Appendix A and Appendix B).

A consideration with regards to pre-arrival reporting is the potential for delays to business deliverables, if up-to-date information is not provided in relation to an aircraft or vessel. The amendments to require further information to be provided to Biosecurity Officers will allow them sufficient time to assess pre-arrival reports and make decisions, thereby mitigating the risk of delays.

Additional resources will also be required for the department and other bodies to manage new information, and to activate a new management regime in response. These costs are highly variable and difficult to quantify with any reasonable level of



certainty. In particular, the resources required to implement the Human Biosecurity Group Direction, will depend on the frequency and duration of these directions.

No additional costs are foreseen for government agencies to implement the amendments regarding negative pratique, including the changes to the penalties for breaches of pratique.

### Regulatory burden estimate

Table 5 below presents a matrix mapping the proposed legislative amendments against the segments expected to incur an additional regulatory burden as a result of these amendments.

Proposed amendment	Businesses	Individuals	Community Organisation
Multiple pre-arrival reporting requirements	X		
Requirements to update pre-arrival reporting	X		
Expand negative pratique obligations			
Create a power to issue directions to apply to a group of persons (Human Biosecurity Group Direction, or HBGD)	X	X	

**Table 5 – Anticipated Regulatory Burden mapped against Segments**

As noted in Table 5 above, a regulatory burden estimate was calculated for the proposed amendments relating to “Multiple pre-arrival reporting requirements”, “Requirements to update pre-arrival reporting” and “Create a power to issue directions to apply to a group of persons (Human Biosecurity Group Direction, or HBGD)”. The underlying cost drivers could be determined with varying levels of certainty.

In particular, a significant level of uncertainty exists with regards to the estimated burden imposed on businesses and individuals by the proposed Human Biosecurity Group Direction. A sensitivity analysis was performed, the result of which is outlined in Appendix C below.

Table 6 below presents the quantifiable impacts, derived using the Regulatory Burden Measurement Framework.

Change in average annual regulatory costs (\$ million)				
Proposed amendment	Individuals	Business	Community organisations	Total change in cost
Multiple pre-arrival reporting (sea pathway)		(\$ 0.153)		<b>(\$ 0.153)</b>
Updated information reporting (sea pathway only)		(\$ 0.003)		<b>(\$ 0.003)</b>
Human Biosecurity Group Direction	(\$ 0.119)			<b>(\$ 0.119)</b>
<b>Total, by sector</b>	<b>(\$ 0.119)</b>	<b>(\$ 0.156)</b>	-	<b>(\$ 0.275)</b>

**Table 6 – Option 3 Regulatory Burden Estimate**

The data and assumptions underpinning the regulatory burden estimate outlined in Table 6 above, are presented in Appendix C below.

The increased regulatory burden is offset, at least partly, by anticipated savings due to the more nuanced human health risk management regime in option 3 in which some level of disembarkation of passengers and loading and unloading of goods can occur according to the assessment of risk. Vessel operators incur additional costs due to delays arising from negative pratique, including the ship operating costs and the costs of holding inventory. One estimate puts the cost of waiting time for cargo vessels to berth at a foreign port at USD2,150 to USD5,300 per day, depending on the size of the vessel (Nguyen). Allowing pratique to be granted while managing the human health risks reduces these costs as the ship can berth and unload

goods and possibly some passengers. The quantum of savings cannot be estimated with any certainty, due to the number of variables including the frequency and length of delays and the size, type and number of vessels affected.

It is also worth noting that the potential cost to affected individuals imposed by the proposed new mechanism to issue HBGDs is greatly offset by the wider economic benefit of better management of the risk of a listed human disease entering the community, for example by ensuring symptomatic passengers are not disembarked, thereby avoiding greater harm to the economy.

## 5. Who did you consult and how did you incorporate their feedback?

The human biosecurity risk management issues addressed in this RIS have been subject to consideration and public consultation in the inquiries referred to above. The New South Wales Special Commission made a call for public submissions and received 152 written submissions, including submissions from passengers on the Ruby Princess. The Commission also held public hearings into its inquiry between 22 April 2020 and 17 July 2020. The Inspector-General of Biosecurity consulted within and outside the Department of Agriculture, Water and the Environment. The Inspector-General's report including the department's response to the recommendations in the report was published on 29 April 2021.

Subsequent to those reviews, there has been targeted consultation with industry and with state and territory public health officials, noting that some of the policy problems being addressed had a public airing in the independent reviews. The reforms relate to public health question and their development has been guided by experts at Commonwealth and state and territory level. It is urgently required to support safe resumption of international travel in line with government priorities in short timeframes. Such constraints, along with the need to engage with all states and territories on the framework through the Chief Human Biosecurity Officer (CHBO) Forum, do not support a long public consultation lead time or the preparation of a draft exposure Bill for public consultation.

The cruise industry has been consulted on the proposed new pre-arrival reporting process in meetings held in March 2021. The Department of Infrastructure, Transport, Regional Development and Communications has chaired whole-of-government meetings with the cruise industry throughout the pandemic. These meetings include the department, the Department of Health, and the Australian Border Force, as well as representatives from cruise companies and cruise industry peak bodies. Suggestions for potential reforms, including the recommendations made by the NSW Commission, were discussed with the cruise industry at a meeting held by teleconference on 17 March 2021.

The COVID-19 pandemic has been devastating for the cruise industry and the industry has demonstrated its eagerness to work with government to manage health risks for passengers and crew and develop a framework to support the resumption of cruise travel.

The department also consulted Ports Australia in June 2021 at a meeting attended by senior operations personnel from most major public and private ports. Details about the full package of proposed changes was presented at that meeting.

Further consultation will be conducted with broader industry groups as part of the development of regulations and implementation of the proposals to develop awareness of the new mechanisms for Human Biosecurity Group Directions and new and increased penalties for non-compliance with reporting and pratique requirements. The department is developing a detailed implementation plan in consultation with the Department of Health that will also address the further consultation to be conducted with such industries.

The Commonwealth, including the department and the Department of Health, consulted with and received feedback from States and Territories through meetings of the CBHO Forum. This reflects that the HBOs and CHBOs are officers of the state and territories undertaking Commonwealth functions under the Act.

The legislation to implement Option 3 is high-level in relation to changes to pre-arrival reporting with the detail to be provided in the regulations. Development of the regulations will be subject to further consultation. Further implementation and operational work would be undertaken in close liaison with all relevant stakeholders along with communications in line with the implementation plan being developed as discussed in section 7.

## 6. Preferred Option

### Option 3: Amendments to the Biosecurity Act

Option 3 is the preferred way of addressing the problems identified in this RIS. It is also consistent with the recommendations of the reviews into the Ruby Princess cruise ship incident (Appendices A and B). Option 3 does not create a new regulatory scheme but amends the existing scheme in the Biosecurity Act. Therefore, legislative amendments are required to ensure the scheme is fit-for-purpose based on the learnings from the COVID-19 pandemic. The improvements will ensure that the objectives of the Biosecurity Act are met without resulting in an unnecessary regulatory burden.

Option 3 best addresses the risk of listed human diseases entering into Australian territory through international vessel arrivals and would apply in the context of the current COVID-19 pandemic, while also providing flexibility to manage infectious disease risks that Australia may face in the future.

A key benefit expected to materialise as a result of the proposed amendments is the support it lends toward the recovery of the cruise industry, to pre-pandemic levels. This includes refilling the 18,135 jobs that existed at the end of the 2018-19 financial year and building back up to the \$5.2 billion in annual economic output that was generated directly and indirectly by the industry.

Option 3 provides for enhanced pre-arrival reporting requirements to ensure more timely and accurate human health information is available, to better enable Human Biosecurity Officers to identify, assess and manage human biosecurity risk, with the potential to implement measures to prevent the spread of disease.

The proposed HBGD power will allow for the assessment and management of human health risks for a group of people such as on a large cruise vessel, or the crew of a commercial vessel.

Option 3 further aims to deter non-compliance with pratique by extending the requirement to comply with negative pratique obligations to the person in charge of a vessel or aircraft (instead of only the operator). This would more appropriately reflect responsibility for the vessel or aircraft and more effectively target obligations for compliance. To further deter non-compliance with requirements, the existing civil penalty that applies to an operator would be increased, and a new civil penalty would apply to the person in charge of the vessel or aircraft.

Option 3 addresses the desired policy objectives, with the benefits outweighing quantifiable increases in the regulatory burden for businesses. This regulatory burden is estimated at \$0.275 million per year or \$2.750 million in total over ten years (expressed in present value terms), over maintaining the current regulatory framework (Option 1). The regulatory costs that are likely to arise from Option 3 are partly due to additional reporting requirements, and partly due to the burden imposed on individuals by the Human Biosecurity Group Direction.

Relevant industries, including conveyance operators, associated industries and insurers, the ports and airports, and government agencies, both Commonwealth and State and Territory, will need to amend processes and agreements, direct resources to implement the amendments, provide training and education, and enforce the new regulatory requirements.

This targeted reform represents a critical step towards the national COVID-19 economic recovery, including towards the resumption of the cruise ship industry in Australia, and shoring up the human health biosecurity framework into the future.

## 7. How will you implement and evaluate your chosen option?

Changes to the Biosecurity Act will be implemented through a Bill amending that Act. The Department proposes that the amendments would enter into force on a date to be fixed by proclamation, or on the day after the period of 6 months beginning on the day the proposed Act receives the Royal Assent, if not proclaimed earlier. This will provide an opportunity for further consultation with stakeholders on implementation of the proposals and development of legislative instruments, including amendments to regulations, to support that implementation.

The department is currently developing a detailed implementation plan in consultation with the Department of Health. The implementation plan will identify key stakeholders and the engagement that will occur with those stakeholders. The implementation plan will also address development and delivery of training for relevant officers, updating of instructional material for officers, and ongoing meetings with industry participants.

It is anticipated that the amendments to the Biosecurity Act will be made prior to resumption of cruises, so that transitional arrangements will not be required.

The effectiveness of the preferred option, once implemented, will be monitored and reviewed over time by the departmental officials and officials from the Department of Health. Careful consideration will be given to feedback from stakeholders impacted by the new requirements. It will be open to any interested parties to provide feedback to government on these implemented reforms if they are found not to be working as intended. The department will consider necessary changes to internal processes or the regulatory requirements if necessary.

The regulatory changes will be reviewed to assess the level of compliance with the new requirements and whether the objective of their implementation is being achieved.

# Reference

- ABS 2018, [Employee Earnings and Work Hours, Australia 2018](#), Australian Bureau of Statistics, Canberra
- CLIA-Qualtrics Survey 2021, [Survey Dec2020 - 4,000 International vacationers each, eight countries, U.S, Canada, Australia, UK, Germany, France, Italy and Spain](#), CLIA-Qualtrics, Washington DC
- CLIA-AEC EIA 2018/19, [Independent Economic Impact Assessment by AEC Group Pty Ltd](#), CLIA 2019
- CLIA-AEC EIA 2019/20, [Independent Economic Impact Assessment by AEC Group Pty Ltd](#), CLIA 2020
- CLIA Industry Outlook 2021, [State of the Cruise Industry Report 2021](#), CLIA 22 December 2020
- Walker SC, Bret, [Special Commission of Inquiry into the Ruby Princess](#), 14 August 2020
- Department of Agriculture, Regulator Performance Framework 2018-19 self-assessment for Agriculture, Biosecurity Overview.
- Department of Agriculture, Water and the Environment, Agency response, Appendix A to the Inspector-General of Biosecurity's report, [Confidence testing for at-border delivery of critical human biosecurity functions – Ruby Princess cruise ship incident](#), 23 April 2021
- Inspector-General of Biosecurity, [Confidence testing for at-border delivery of critical human biosecurity functions – Ruby Princess cruise ship incident](#), Review Report No 2020-21/02, Commonwealth of Australia, 29 April 2021
- Nguyen, Minh-Duc and Kim, Sung-June, An estimation of the average waiting cost of vessels calling container terminals in Northern Vietnam, Journal of the Korean Society of Marine Environment & Safety, Vol. 25, No. 1, pp. 027-033, February 28, 2019.
- The Parliament of the Commonwealth of Australia, Biosecurity Bill 2014 Explanatory Memorandum
- Walker SC, Bret, [Special Commission of Inquiry into the Ruby Princess](#), 14 August 2020

## Appendix A Relevant recommendations from the NSW Special Commission of Inquiry

The New South Wales Report of the Special Commission of Inquiry into the Ruby Princess included two recommendations to amend the *Biosecurity Act 2015*.

2.22 That any future review of the Biosecurity Act consider the utility and possible expansion of human biosecurity control orders so as to be applicable to persons or groups.

2.23 That the Biosecurity Act make explicit a requirement to update superseded human health information.

## Appendix B Relevant recommendations from the Inspector-General of Biosecurity's review

The Inspector-General of Biosecurity's report *Confidence testing for at-border delivery of critical human biosecurity functions – Ruby Princess cruise ship incident*, Review Report 2020-21/02 included five recommendations to amend the *Biosecurity Act 2015*.

*Recommendation 19* The provisions within the Biosecurity Act 2015 relating to pratique should be reviewed to provide greater flexibility in managing pratique based on human biosecurity risk – in particular, to allow for aircraft and vessels to load and unload cargo and stores where this represents an acceptably low level of risk. The loading of provisions for crew onboard commercial cargo vessels and cruise ships in negative pratique should be incorporated in relevant instructional material.

*Recommendation 20* The provisions within the Biosecurity Act 2015 should be reviewed with a view to providing biosecurity officers with broader powers that will assist them in managing large numbers of passengers and crew with potential Listed Human Diseases onboard foreign commercial vessels.

*Recommendation 21* The Biosecurity Act 2015 should be amended to provide biosecurity officers with greater powers to enforce negative pratique, to provide for penalties to be applied to individuals who breach negative pratique, and to make the 'person in charge' (and operator) of a conveyance, defined in section 22 of the Act, also responsible for any noncompliance with negative pratique. This includes provision for issuing Infringement Notices for pratique breaches.

*Recommendation 22* The Biosecurity Act 2015 should be amended to provide biosecurity officers with clear powers to revoke pratique, including where either incorrect or inaccurate information is supplied by the vessel operator or there are changes to the vessel's human biosecurity risk status over time.

*Recommendation 24* The Biosecurity Act 2015 should be amended to require vessel operators to report updated biosecurity information, including human biosecurity information, if there are any changes to the information required under section 193 between the time that the Pre-arrival Report was submitted and the time of the vessel's departure from Australia.



# Appendix C Regulatory Burden Estimate – Data and Assumptions

This appendix outlines the data and assumptions driving the regulatory burden estimates of Options 2 and 3, as follows:

- Multiple pre-arrival reporting (sea pathway) (Options 2 and 3)
- Updated information reporting (Options 2 and 3)
- Human Biosecurity Group Directions (Option 3 only – not available under existing legislation)

Multiple pre-arrival reporting and Updated Information Reporting are solutions proposed under Option 3, through amendments to the Biosecurity Act. It is anticipated that emergency health declarations can be created under Option 2 which would achieve outcomes broadly similar to the proposed amendments under Option 3. As a result, the regulatory burden for these two outcomes is calculated below and apply to Option 2 as well as Option 3.

The third solution listed above, the Human Biosecurity Group Direction, is only available under Option 3. The powers available to make determination under Option 2 are not available for the management of individuals (Biosecurity Bill 2014 Explanatory Memorandum pages 294-295). As a result, the regulatory burden associated with the introduction of a Human Biosecurity Group Direction is only included with Option 3 and excluded from Option 2.

## Multiple pre-arrival reporting (sea pathway)

- Number of businesses affected: 29

In order to facilitate a reliable build-up of costs, information was obtained regarding the size of the Australian Cruise market through consultation with various Government organisations (Department of Health, Department of Infrastructure, Transport, Regional Development and Communications) and Ports Australia and within industry (Cruise Lines International Association). It was established that 29 cruise operators visited Australian shores during the 2019 calendar year, with a total of 2,092 cruise ship visits identified during that period (refer **Error! Reference source not found.** below).

Cruise company	Vessels Visits to Australia in 2019 Calendar Year	Vessels Visits to Australia in 2019 Calendar Year (%)
P & O Cruises	491	23.5%
Princess Cruises	209	10.0%
Ponant	161	7.7%
Carnival Cruises	147	7.0%
Royal Caribbean	141	6.7%
Holland America	121	5.8%
Expedition Cruising APT	96	4.6%
Cruise and Maritime Voyages company	86	4.1%
Viking Cruises	69	3.3%
Regent Seven Seas Trio	64	3.1%
Noble Caledonia Cruises	61	2.9%
Oceania Cruises	57	2.7%
Cunard	50	2.4%
Global Cruise Lines	50	2.4%
Celebrity Cruises	48	2.3%
Other (14 operators)	241	11.5%
<b>Grand Total (29 operators)</b>	<b>2,092</b>	<b>100.0%</b>

**Table 7 – Cruise Ship Visits to Australian Shores in 2019 Calendar Year**

- Number of times activities are performed per annum:
  - 2,092 cruise ship arrivals occurred in 2019, across 29 cruise operators. I.e. an average of 72 arrivals per business. As the additional pre-arrival reporting is required for each arrival, 72 was used as the value for “number of times activity is performed” per staff member (for simplicity it was assumed that one staff member performs each task, for each operator).
- Hours of effort for a person to perform the task each time:
  - Perform updated cruise vessel pre-arrival reporting = 1.0 hours
- Staff used to perform the task: non managerial employee with wage rate of \$41.74 per hour at 75 per cent overheads and on-costs.
- Calculations:
  - Annual activity cost = \$41.74 \* 1.75 \* 1.0 \* 29 \* 72 = \$152,518.

As reflected in Table 6 above, the component of the regulatory burden estimate which relates to multiple pre-arrival reporting amounts to \$0.153m per annum. This estimate assumes that the further report will be limited to questions on human health matters, and that the MARS input form will either be pre-populated with the information previously reported or will ask for updated information only. In either case, the labour effort required would be minimal. Through consultation with industry and various government departments as outlined above, one activity was identified (update and submit pre-arrival reporting). It is assumed that this activity will require 1.0 hours of effort.

### Updated information reporting

Option 3 includes a requirement to update pre-arrival reporting when there is a change in health circumstances aboard a vessel or aircraft. This could be seen as an extension of the current requirement to correct or complete information.

This requirement will impose a regulatory burden on the operators of aircraft or vessels, although quantifying that burden is challenging as it is based on exceptional circumstances arising. For cruise ships, any changes aboard will typically be captured by the proposed new requirement for a further PAR, although the requirement for updating information will continue beyond the PAR.

The requirement to provide updated reporting will also apply to commercial vessels other than cruise ships, which typically carry much smaller numbers of crew and passengers. The Inspector-General of Biosecurity's report identified 11 commercial vessels (plus two cruise ships) with confirmed cases of COVID-19 in the period February-October 2020.

Unlike the commercial vessel environment where there are medical officers on cruise vessels, or first aid officers for a small number of crew on a commercial vessel, the aircraft environment involves passengers in close physical proximity for a comparatively short period of time. Unless very unwell during the flight, it is unlikely that a passenger will notify the crew. These factors may reduce the likelihood of ill passengers self-identifying as sick for on-arrival assessment. While there will be some additional regulatory burden for aircraft, any new requirements for updated information are likely to be less burdensome for aircraft than for vessels as the information is less likely to be available to the aircraft crew.

A regulatory burden estimate was derived for "Requirements to update pre-arrival reporting", as follows:

- Number of times activities are performed per annum:  
As noted above, 13 vessels (11 commercial and two cruise ships) with confirmed COVID cases were reported in a nine month period and would therefore have been expected to provide additional reporting. For this estimate a total of 50 reporting instances were assumed, across vessels as well as aircraft. Confidence in this estimate is low, but the overall effect is unlikely to be significant.
- Calculations:
  - Annual activity cost =  $\$41.74 * 1.75 * 1.0 * 50 * 1 = \$3,652$ .

### Human Biosecurity Group Directions

Under the proposed amendments to the Act, a group of individuals may be subject to a human biosecurity group direction (HBGD). Such a direction would result in a regulatory burden on businesses and individuals, as follows:

- Individuals: personal cost to passengers (and in some instances crew) held on the aircraft or vessel for longer than anticipated, e.g., loss of wages, reorganising travel, travel cancellation costs, missed connections, and health care costs as a result of contracting illness while the aircraft or vessel has negative pratique status.

Under current legislation, the alternative to a HBGD would be to limit the movement of specific individuals by means of a Human Biosecurity Control Order (HBCO). As a HBGD would only be imposed for a short duration of time, this would reduce the impact on businesses on-shore, compared to the status quo where a more lengthy HBCO may be used.

The regulatory burden imposed on individuals, businesses, and community organisations as a result of the introduction of a HBGD would be dependent on a wide range of variables, such as the frequency and duration of the directions, as well as the specific details of each case. This depends on the risks identified as well as the mitigatory actions required in each case.

Table 8 below outlines three anticipated scenarios, which vary from a highly conservative estimate (higher cost) to a highly optimistic scenario (i.e., lower cost).

As per the Regulatory Burden Measurement Framework, the following activities were identified:

- individual/s may be prevented from disembarking a vessel or aircraft
- individual/s may be required to move to a designated area to be isolated from other travellers
- individual/s may be required to wear PPE or may undergo testing

Scenario	# of individuals affected by activity	# of times activity performed per individual (annually)	Avg. time of each individual to do activity (in hrs)	Labour cost (\$/hr) (wage cost)	Total Activity Cost (over 10yr period)	Total Activity Cost (annual)
<b>Sensitivity scenario 1:</b> 10% of all travellers are subject to an HBGD power at least once in 10 years, with each event lasting the current maximum time proposed, of 12 hrs	124,000	0.1 (i.e. once every 10 years)	12	32.00	<b>4,761,600</b>	<b>476,160</b>
<b>Sensitivity scenario 2:</b> 5% of all travellers are subject to an HBGD power at least once in 10 years, and each event lasting 8 hrs	62,000	0.1 (i.e. once every 10 years)	6	32.00	<b>1,190,400</b>	<b>119,040</b>
<b>Sensitivity scenario 3:</b> 2% of all travellers are subject to an HBGD power at least once in 10 years, with each event lasting 4 hrs	24,800	0.1 (i.e. once every 10 years)	4	32.00	<b>317,440</b>	<b>31,744</b>

**Table 8 – Regulatory Burden (Individuals) Sensitivity Analysis – Human Biosecurity Group Direction**

As illustrated in table 8Error! Reference source not found. above, the regulatory burden to be imposed on individuals by the HBGD power present some significant difficulties to quantify. Scenario 1 indicates a case where 10% of all cruise ship travellers will be subject to an HBGD power at least once every 10 years, with each event lasting 12 hours (currently anticipated to be the maximum time for which the group direction can be imposed). This equates to an additional regulatory burden of roughly \$0.476m per annum.

Scenario 2 (\$0.119m per annum) is based on 5% of all passengers being subject to a HBGD at least once every ten years, lasting 8 hours.

Scenario 3 presents a case where 2% of all cruise ship travellers will be subject to an HBGD power at least once every 10 years, with each event lasting four hours. This equates to a regulatory burden of roughly \$0.032m per annum.

The figure from Scenario 2 (\$0.119m) is used as a representative regulatory burden for the HBGD proposed under Option 3, in Table 6 above.

This power is not available under existing legislation and has therefore been excluded from Option 2 in Table 3 above.

## Appendix D Benefits to the Broader Australian Economy and the Australian Cruise Industry

A key benefit expected to materialise as a result of the proposed amendments is the support it lends toward the recovery of the cruise industry, to pre-pandemic levels. This includes refilling the more than 18,000 jobs that existed at the end of the 2018-19 financial year and building back up to the \$5.2 billion in annual economic output that was generated directly and indirectly by the industry.

### Benefits to the Broader Australian Economy:

 **\$5.2 billion in economic output (direct & indirect)**

 **18,135 total jobs created (direct & indirect)**

The cruise industry has exhibited strong growth over the past decade. In 2018, 200,000 international visitors entered Australia on cruise ships from 145 countries. The 2018-19 financial year saw an increase of 11.2% in the industry's total value to the national economy, contributing \$5.2 billion for the year, with an equivalent of 18,135 full time jobs supported by the cruise industry (AEC Economic Impact Assessment, 2019). This represented a 6.6% increase on the previous year.

The suspension of cruise operations internationally in March 2020 because of the COVID-19 pandemic, has had a devastating impact on the cruise industry. Between March and September 2020 alone, it is estimated that the suspension of cruise operations had resulted in a loss of more than 518,000 jobs worldwide, US\$23 billion in lost wages and US\$77 billion in global economic activity (CLIA Industry Outlook 2021).

A significant reduction in jobs as well as economic output was witnessed in Australia from March 2020 onwards, seeing a decline from the 18,135 full time jobs at the end of FY18-19 to 15,126 jobs at the end of FY19-20 (AEC Economic Impact Assessment, 2020).

This represents a drop of 16.6% in the three months from April to June 2020 alone. The contribution to the economy also reduced from \$5.2 billion in the 2018-19 financial year to output of \$4.8 billion in the following year (refer Table 9 below). This decline in output of \$0.5 billion only reflects the effect the pandemic had on the industry from mid-March 2020 until the end of June 2020.

State/Territory	Total 'Passenger Visit Days'	Economic Gain for Region (A\$m)
Western Australia	152,000	276
Northern Territory	135,000	172
South Australia	115,000	118
Queensland	778,000	1,000
New South Wales	1,400,000	2,800
Victoria	314,000	317
Tasmania	213,000	106
<b>TOTAL</b>	<b>3,107,000</b>	<b>4,789</b>

Source: <https://www.cruiseagency.com.au/news/australian-cruise-industry-statistics>

**Table 9 – 2019-20 Cruise passenger visits**

Although exact figures are not yet available for the 2020-21 financial year, it is known that the cruise industry was not operational at any time during this period, effectively resulting in a loss of up to \$5.2 billion (the annual economic output by the industry seen in FY19), as well as the majority of the 18,135 jobs in existence at the end of that period.

It is important to be aware of the economic benefits that a thriving Cruise industry will provide to the Australian economy. By putting in place a more robust and flexible framework within which to manage the development of human biosecurity risks, the Cruise industry is more likely to restart, leading to growth in jobs and in the broader Australian economy.

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