



Biosecurity Amendment (Ballast Water and Other Measures) Act 2017

No. 34, 2017

**An Act to amend the *Biosecurity Act 2015*, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Biosecurity Amendment (Ballast Water and Other Measures) Act 2017

No. 34, 2017

An Act to amend the *Biosecurity Act 2015*, and for related purposes

[Assented to 17 May 2017]

The Parliament of Australia enacts:

1 Short title

This Act is the *Biosecurity Amendment (Ballast Water and Other Measures) Act 2017*.

No. 34, 2017 *Biosecurity Amendment (Ballast Water and Other Measures) Act 2017* 1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	18 May 2017
2. Schedule 1	<p>The later of the following days:</p> <p>(a) the day after this Act receives the Royal Assent;</p> <p>(b) the day the International Convention for the Control and Management of Ships' Ballast Water and Sediments, done at London on 13 February 2004, comes into force for Australia.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce, by notifiable instrument, the day the Convention comes into force for Australia.</p>	<p>8 September 2017 (F2017N00073) (paragraph (b) applies)</p>
3. Schedule 2	The day after this Act receives the Royal Assent.	18 May 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to the Ballast Water Convention

Biosecurity Act 2015

1 Section 3 (paragraph relating to Chapter 5)

Repeal the paragraph, substitute:

Chapter 5 implements the Ballast Water Convention and regulates the ballast water and sediment of certain vessels in accordance with the United Nations Convention on the Law of the Sea. It requires reporting of intended or actual discharges of ballast water in Australian territorial seas. Discharging ballast water is an offence, subject to a range of exceptions, and there is an offence of disposing of sediment. For an Australian vessel, these offences apply whether the vessel is in or outside Australian seas. For a foreign vessel, the offences apply only if the vessel is in Australian seas. The definition of *Australian seas* depends on whether the Administration of the foreign vessel is a party to the Ballast Water Convention. The Chapter also includes provisions for ballast water management plans and certificates, record-keeping obligations and powers to ensure compliance.

2 Paragraph 4(b)

After “SPS Agreement”, insert “, the Ballast Water Convention, the United Nations Convention on the Law of the Sea”.

3 Section 9 (definition of *appropriate ballast water records*)

Repeal the definition, substitute:

appropriate ballast water records has the meaning given by section 295.

4 Section 9 (definition of *Australian seas*)

Repeal the definition, substitute:

Australian seas means:

- (a) for Australian vessels and foreign vessels whose Administration is a party to the Ballast Water Convention—the waters (including the internal waters of Australia) that are within the outer limits of the exclusive economic zone of Australia; or
- (b) for all other foreign vessels—the Australian territorial seas.

Note: This definition is affected by sections 260 (vessels in dry dock) and 261 (foreign vessels and the Australian Antarctic Territory).

5 Section 9

Insert:

Australian territorial seas means the waters (including the internal waters of Australia) within the outer limits of the territorial sea of Australia (including every external Territory).

Note: This definition is affected by sections 260 (vessels in dry dock) and 261 (foreign vessels and the Australian Antarctic Territory).

6 Section 9 (at the end of the definition of *Ballast Water Convention*)

Add “, as in force from time to time”.

7 Section 9

Insert:

IMO guidelines means guidelines or procedures adopted by the Marine Environment Protection Committee of the International Maritime Organization, as in force from time to time.

Note: The text of guidelines or procedures adopted by the Marine Environment Protection Committee of the International Maritime Organization could in 2017 be accessed through the International Maritime Organization’s website (<http://www.imo.org>).

offshore terminal has the same meaning as in the Ballast Water Convention.

8 Section 9 (paragraph (b) of the definition of *relevant person*)

After “regulations” (first occurring), insert “or a determination”.

9 Section 9 (paragraph (b) of the definition of *relevant person*)

After “regulations” (second occurring), insert “or determination”.

10 Section 9 (definition of *sediment reception facility*)

Repeal the definition, substitute:

sediment reception facility means:

- (a) for an Australian vessel that is not in Australian seas—a facility for receiving sediment from vessels for treatment or disposal in accordance with IMO guidelines; or
- (b) otherwise—a facility in Australian territory for receiving sediment from vessels for treatment or disposal in a way authorised under:
 - (i) a law of the Commonwealth; or
 - (ii) if the facility is in a State or Territory—a law of the State or Territory.

11 Section 9 (definition of *survey authority*)

Omit “section 289”, substitute “section 290A”.

12 Section 260

Omit “Australian seas”, substitute “the territorial sea of Australia”.

13 Section 261

Repeal the section, substitute:

261 Foreign vessels and the Australian Antarctic Territory

- (1) For the purposes of this Chapter, a foreign vessel that is within the outer limits of the territorial sea of the Australian Antarctic Territory is taken not to be in Australian seas.
- (2) In addition, a foreign vessel:
 - (a) whose Administration is a party to the Ballast Water Convention; and
 - (b) that is within the outer limits of the exclusive economic zone adjacent to the coast of the Australian Antarctic Territory;is also taken not to be in Australian seas.

14 After section 263

Insert:

263A Warships, naval auxiliary or other vessels owned or operated by the Australian government or the government of a foreign country

This Chapter does not apply in relation to vessels referred to in Article 3.2(e) of the Ballast Water Convention.

Note: Article 3.2(e) of the Ballast Water Convention refers to “any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service”.

15 Part 2 of Chapter 5 (heading)

Repeal the heading, substitute:

Part 2—Notice of discharge of ballast water in Australian territorial seas

16 Section 266

Omit “Australian seas”, substitute “Australian territorial seas”.

17 Section 267 (heading)

Repeal the heading, substitute:

267 Reporting ballast water discharges in Australian territorial seas

18 Subsection 267(1)

Omit “Australian seas”, substitute “Australian territorial seas”.

19 Paragraph 267(2)(a)

Omit “the regulations”, substitute “the determination under section 308A”.

20 Paragraph 267(2)(b)

Omit “the regulations”, substitute “the determination”.

21 Paragraph 267(2)(c)

Omit “the regulations (which may be before or after the vessel enters Australian seas”, substitute “the determination (which may be before or after the vessel enters Australian territorial seas”.

22 Subsection 267(2) (note)

Omit “The regulations”, substitute “The determination”.

23 Subsection 267(3)

Omit “The regulations”, substitute “The determination under section 308A”.

24 Section 268 (heading)

Repeal the heading, substitute:

268 Reporting ballast water discharges in Australian territorial seas—requirement to give additional or corrected information

25 Section 269

Repeal the section, substitute:

269 Simplified outline of this Part

Division 2 provides an offence of discharging ballast water. For an Australian vessel, the offence applies whether the vessel is in or outside Australian seas. For a foreign vessel, the offence applies only if the vessel is in Australian seas.

The rest of this Part sets out exceptions to the offence that may apply if:

- (a) the ballast water was managed for discharge by an approved method of ballast water management, or by ballast water exchange (Division 3); or
- (b) the discharge was part of an acceptable ballast water exchange (Division 4); or
- (c) the discharge was an approved discharge of ballast water to a ballast water reception facility (Division 5); or

- (d) the discharge was covered by an exemption (Division 6, which also provides for the Director of Biosecurity to prescribe and grant exemptions); or
- (e) the ballast water was discharged at or near the place where it was taken up into the vessel (Division 7); or
- (f) the ballast water was discharged for reasons of safety, by accident or in order to avoid or minimise pollution (Division 8, which also sets out reporting requirements for such discharges).

26 Section 270 (heading)

Repeal the heading, substitute:

270 Offence—discharging ballast water

27 Subsection 270(1)

Repeal the subsection, substitute:

Australian vessels

- (1) A person contravenes this subsection if:
- (a) the person is the person in charge or the operator of a vessel;
and
 - (b) the vessel is an Australian vessel; and
 - (c) the vessel discharges ballast water (whether in or outside Australian seas).

Note: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 534).

Foreign vessels

- (1A) A person contravenes this subsection if:
- (a) the person is the person in charge or the operator of a vessel;
and
 - (b) the vessel is a foreign vessel; and
 - (c) the vessel is in Australian seas; and
 - (d) the vessel discharges ballast water.

Note: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 534).

28 Subsections 270(2) and (3)

After “subsection (1)”, insert “or (1A)”.

29 Subsection 270(3) (penalty)

Repeal the penalty, substitute:

Penalty: 500 penalty units.

30 At the end of section 270

Add:

Exception

- (4) Subsections (1) and (1A) do not apply if:
- (a) the condition in section 271, 276, 277, 278A, 279, 282, or subsection 283(1), (2) or (3), is met in relation to the discharge of ballast water; and
 - (b) either of the following applies:
 - (i) the vessel has a ballast water management plan, and a ballast water management certificate is in force for the vessel;
 - (ii) the vessel is prescribed for the purposes of subsection 285A(3) or is granted an exemption under the scheme prescribed for the purposes of section 285B; and
 - (c) if subparagraph (b)(i) of this subsection applies—the management of the ballast water was carried out in accordance with the ballast water management plan; and
 - (d) if subparagraph (b)(ii) of this subsection applies—any condition of the exemption granted under the scheme prescribed for the purposes of section 285B has been met.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

31 Application of amendments

The amendments of section 270 of the *Biosecurity Act 2015* made by this Schedule apply in relation to discharges of ballast water that occur after the commencement of this Schedule.

32 Section 271

Omit “Section 270 does not apply”, substitute “The condition in this section is met in relation”.

33 Section 271 (note)

Repeal the note.

34 Paragraph 272(a)

Omit “by the Director of Biosecurity under”, substitute “for the purposes of”.

35 Paragraphs 272(b) and (c)

Repeal the paragraphs, substitute:

- (b) at the time the ballast water is discharged, the vessel has appropriate ballast water records; and

36 Paragraph 272(d)

Omit “the regulations”, substitute “the determination under section 308A”.

37 Section 272 (note 1)

Omit “sections 295 (for Australian vessels) and 296 (for foreign vessels)”, substitute “section 295”.

38 Section 272 (note 2)

Omit “The regulations”, substitute “The determination”.

39 Subsections 273(1) and (3)

Omit “the regulations”, substitute “the determination under section 308A”.

40 Subsection 273(3) (note)

Omit “The regulations”, substitute “The determination”.

41 Section 274

Repeal the section, substitute:

274 Method of ballast water management—approval of method approved by foreign country

The determination under section 308A may specify a method of ballast water management that is approved, for the purposes of this section, if the method has been approved, in accordance with the Ballast Water Convention, by a foreign country.

42 Paragraph 275(1)(a)

Omit “prescribed proportion (by volume)”, substitute “proportion (by volume), prescribed by the determination under section 308A,”.

43 At the end of subsection 275(1)

Add:

; and (c) the vessel is not specified by the determination to be excluded from the operation of this section.

44 Subsection 275(1) (note 1)

Omit “sections 295 (for Australian vessels) and 296 (for foreign vessels)”, substitute “section 295”.

45 Subsection 275(2)

Omit “The regulations”, substitute “The determination under section 308A”.

46 Paragraph 275(3)(a)

Omit “area declared by the Director of Biosecurity under subsection (4)”, substitute “area prescribed, or an area meeting requirements prescribed, by the determination under section 308A”.

47 Paragraph 275(3)(b)

Repeal the paragraph.

48 Paragraph 275(3)(c)

Omit “the regulations”, substitute “the determination”.

49 Subsections 275(4) and (5)

Repeal the subsections.

50 Section 276

Omit “Section 270 does not apply”, substitute “The condition in this section is met in relation”.

51 Section 276 (note)

Repeal the note.

52 Section 277

Omit “Section 270 does not apply”, substitute “The condition in this section is met in relation”.

53 Paragraph 277(a)

Repeal the paragraph, substitute:

- (a) the ballast water is discharged to a ballast water reception facility:
 - (i) in accordance with an approval given by the Director of Biosecurity under section 278; or
 - (ii) that has been provided, or approved, in accordance with IMO guidelines; and

54 Section 277 (note)

Repeal the note.

55 Subsection 278(1)

Omit “the regulations”, substitute “the determination under section 308A”.

56 Paragraph 278(1)(a)

Omit “a discharge”, substitute “one or more discharges”.

57 Paragraph 278(3)(a)

Omit “the regulations”, substitute “the determination under section 308A”.

58 Before section 279

Insert:

278A Exception—discharge covered by prescribed conditions

- (1) The condition in this section is met in relation to a discharge of ballast water from a vessel if conditions prescribed by the determination under section 308A for the purposes of this section are met in relation to the discharge.
- (2) The Director of Biosecurity may prescribe conditions for the purposes of this section only if he or she is satisfied that those conditions are consistent with the objects of this Act.

59 Section 279

Omit “Section 270 does not apply”, substitute “The condition in this section is met in relation”.

60 Section 279 (note)

Repeal the note.

61 Paragraphs 280(1)(a) and (b)

Omit “or locations”, substitute “, offshore terminals or other locations”.

62 Subsection 280(3)

Omit “the regulations”, substitute “the determination under section 308A”.

63 Section 282

Omit “Section 270 does not apply”, substitute “The condition in this section is met in relation”.

64 Paragraph 282(a)

After “port”, insert “, offshore terminal”.

65 Paragraph 282(c)

After “port”, insert “or offshore terminal”.

66 Section 282 (note)

Repeal the note.

67 Subsection 283(1)

Omit “Section 270 does not apply”, substitute “The condition in this subsection is met in relation”.

68 Subsection 283(1) (note)

Repeal the note.

69 Subsection 283(2)

Omit “Section 270 does not apply”, substitute “The condition in this subsection is met in relation”.

70 Subsection 283(2) (note)

Repeal the note.

71 Subsection 283(3)

Omit “Section 270 does not apply”, substitute “The condition in this subsection is met in relation”.

72 Subsection 283(3) (note)

Repeal the note.

73 Paragraph 284(1)(a)

Omit “Australian seas”, substitute “Australian territorial seas”.

74 Subsection 284(3)

After “277,”, insert “278A,”.

75 Subsection 284(4) (penalty)

Omit “500 penalty units”, substitute “120 penalty units”.

76 Application of amendments

The amendments of subsection 284(4) of the *Biosecurity Act 2015* made by this Schedule apply in relation to discharges of ballast water that occur after the commencement of this Schedule.

77 Section 285

Omit:

Division 2 sets out what a ballast water management plan is, and provides for the regulations to prescribe a scheme for the Director of Biosecurity to approve ballast water management plans for Australian vessels.

Division 3 sets out what a ballast water management certificate is, and provides for the regulations to prescribe a scheme for the Director of Biosecurity and survey authorities to survey vessels for the purposes of certification.

substitute:

Division 1A requires most vessels to have a ballast water management plan and a ballast water management certificate. Australian vessels require a plan and certificate in and outside Australian seas. Foreign vessels require a plan and certificate only if they are in Australian seas.

Division 2 sets out what a ballast water management plan is, and provides for the determination under section 308A to prescribe a scheme for the Director of Biosecurity and survey authorities to approve ballast water management plans for vessels.

Division 3 sets out what a ballast water management certificate is, and provides for the determination under section 308A to prescribe a scheme for the Director of Biosecurity and survey authorities to survey vessels for the purposes of certification.

78 After Division 1 of Part 4 of Chapter 5

Insert:

Division 1A—General requirement to have ballast water management plan and certificate

285A Vessels to have a ballast water management plan and certificate

- (1) An Australian vessel (whether in or outside Australian seas) must, subject to subsection (3) and section 285B, have:
 - (a) a ballast water management plan; and

(b) a ballast water management certificate that is in force.

Note: A person may commit an offence if the vessel does not have a ballast water management plan and a ballast water management certificate that is in force (see section 285C).

- (2) A foreign vessel in Australian seas must, subject to subsection (3) and section 285B, have:
- (a) a ballast water management plan; and
 - (b) a ballast water management certificate that is in force.
- (3) The determination under section 308A may prescribe vessels that are exempt from the requirements in subsections (1) and (2).

285B Scheme to provide further exemptions from requirement to have a ballast water management plan and certificate

The determination under section 308A may prescribe a scheme for the Director of Biosecurity or a survey authority to grant an exemption to a particular vessel from the requirement in subsection 285A(1) or (2).

285C Offence for failing to have a ballast water management plan or certificate

Australian vessels

- (1) A person commits an offence if:
- (a) the person is the person in charge of a vessel; and
 - (b) the vessel is an Australian vessel; and
 - (c) neither of the following applies:
 - (i) the vessel has a ballast water management plan, and a ballast water management certificate that is in force for the vessel;
 - (ii) the vessel is prescribed for the purposes of subsection 285A(3) or is granted an exemption under the scheme prescribed for the purposes of section 285B.

Penalty: 200 penalty units.

Foreign vessels

- (2) A person commits an offence if:
-

- (a) the person is the person in charge of a vessel; and
- (b) the vessel is a foreign vessel; and
- (c) the vessel is in Australian seas; and
- (d) neither of the following applies:
 - (i) the vessel has a ballast water management plan, and a ballast water management certificate that is in force for the vessel;
 - (ii) the vessel is prescribed for the purposes of subsection 285A(3) or is granted an exemption under the scheme prescribed for the purposes of section 285B.

Penalty for contravention of this subsection: 200 penalty units.

79 Application of amendments

Sections 285A to 285C of the *Biosecurity Act 2015*, as inserted by this Schedule, apply in relation to discharges of ballast water that occur after the commencement of this Schedule.

80 Section 286

Repeal the section, substitute:

286 Ballast water management plan

A **ballast water management plan** for a vessel is a document:

- (a) that deals with ballast water management for the vessel and the disposal of sediments from the vessel; and
- (b) that meets the requirements prescribed by the determination under section 308A; and
- (c) for which an approval:
 - (i) by the Director of Biosecurity, or a survey authority, is in force under section 287; or
 - (ii) by, or on behalf of, the vessel's Administration is in force.

81 Transitional provision

A ballast water management plan that is in force for the purposes of section 286 of the *Biosecurity Act 2015* immediately before the commencement of this Schedule is taken, after that time, to be in force for the purposes of that section as amended by this Schedule.

82 Section 287 (heading)

Repeal the heading, substitute:

287 Approval of ballast water management plans for vessels

83 Section 287

Omit “The regulations may prescribe a scheme for the Director of Biosecurity to do any of the following in relation to an Australian vessel”, substitute “(1) The determination under section 308A may prescribe a scheme for the Director of Biosecurity or a survey authority to take any of the following actions in relation to a vessel”.

84 At the end of section 287

Add:

- (2) An action referred to in subsection (1) may be taken in relation to a foreign vessel only on request by the vessel’s Administration.

85 Transitional provision

An approval of a ballast water management plan for a vessel that is in force immediately before the commencement of this Schedule under the scheme prescribed by the regulations for the purposes of section 287 of the *Biosecurity Act 2015* is taken, after that time, to have been given under the scheme prescribed by the determination made for the purposes of that section under section 308A of that Act.

86 Section 288

Repeal the section, substitute:

288 Ballast water management certificate

A *ballast water management certificate* for a vessel is a document that:

- (a) certifies that the vessel has a ballast water management plan for which an approval by, or on behalf of, the vessel’s Administration (including an approval under section 287) is in force; and
- (b) is issued or endorsed:
 - (i) by the Director of Biosecurity, or a survey authority, under section 290; or

- (ii) by, or on behalf of, the vessel's Administration; and
- (c) certifies that the vessel meets any other requirements prescribed by the determination under section 308A.

87 Transitional provision

A ballast water management certificate that is in force for the purposes of section 288 of the *Biosecurity Act 2015* immediately before the commencement of this Schedule is taken, after that time, to be in force for the purposes of that section as amended by this Schedule.

88 Section 289

Repeal the section.

89 Subsection 290(1) (heading)

Repeal the heading.

90 Subsection 290(1)

Omit "The regulations may prescribe a scheme for the Director of Biosecurity or a survey authority to do, on behalf of the Commonwealth, any of the following in relation to an Australian vessel", substitute "The determination under section 308A may prescribe a scheme for the Director of Biosecurity or a survey authority to take, on behalf of the Commonwealth, any of the following actions in relation to a vessel".

91 Subsection 290(1) (note)

Omit "an Australian vessel", substitute "a vessel".

92 Subsection 290(2)

Repeal the subsection, substitute:

- (2) An action referred to in subsection (1) may be taken in relation to a foreign vessel only on request by the vessel's Administration.

93 Application of amendments

The amendments of section 290 of the *Biosecurity Act 2015* made by this Schedule apply in relation to any ballast water management certificate, whether the certificate is issued before or after the commencement of this Schedule.

94 At the end of Part 4 of Chapter 5

Add:

Division 4—Survey authorities

290A Director of Biosecurity may authorise person to be survey authority

- (1) The Director of Biosecurity may, in writing, authorise a person to be a survey authority if the Director is satisfied the person has suitable qualifications to perform the functions of a survey authority under:
 - (a) the scheme prescribed for the purposes of section 285B; and
 - (b) sections 287 and 290.
- (2) An authorisation made under subsection (1) is not a legislative instrument.
- (3) A survey authority may charge a fee in relation to anything done under this Part.
- (4) A fee must not be such as to amount to taxation.

95 Section 291

Omit:

Division 2 sets out record-keeping requirements for Australian vessels, and the circumstances in which an Australian vessel has appropriate ballast water records for the purposes of using certain methods of ballast water management.

Division 3 sets out the circumstances in which a foreign vessel has appropriate ballast water records for the purposes of using certain methods of ballast water management.

substitute:

Division 2 sets out record-keeping requirements for vessels, and the circumstances in which a vessel has appropriate ballast water

records for the purposes of using certain methods of ballast water management.

96 Division 2 of Part 5 of Chapter 5 (heading)

Repeal the heading, substitute:

Division 2—Ballast water records

97 Section 292 (heading)

Repeal the heading, substitute:

292 Vessels must have a ballast water record system

98 Subsection 292(1)

After “An Australian vessel”, insert “(whether in or outside Australian seas)”.

99 Subsection 292(1)

Omit “the regulations”, substitute “the determination under section 308A”.

100 After subsection 292(1)

Insert:

- (1A) A foreign vessel in Australian seas that is capable of carrying ballast water must have on board a ballast water record system that complies with the requirements (if any) prescribed by the determination under section 308A.

101 Paragraph 292(2)(a)

Omit “an Australian vessel”, substitute “a vessel”.

102 Paragraph 292(2)(c)

After “subsection (1)”, insert “or (1A)”.

103 Application of amendments

The amendments of section 292 of the *Biosecurity Act 2015* made by this Schedule apply in relation to any voyage, or part of a voyage, that occurs after the commencement of this Schedule (whether the voyage began before or after that commencement).

104 After subsection 293(1)

Insert:

- (1A) A record must be made if a foreign vessel:
- (a) conducts a ballast water operation in Australian seas; or
 - (b) disposes of sediment in Australian seas.

105 Subsection 293(2)

After “subsection (1)”, insert “or (1A)”.

106 Paragraph 293(2)(c)

Omit “the regulations”, substitute “the determination under section 308A”.

107 Paragraph 293(3)(a)

Omit “an Australian vessel”, substitute “a vessel”.

108 Paragraph 293(3)(b)

After “subsection (1)”, insert “or (1A)”.

109 Paragraph 293(4)(a)

Omit “an Australian vessel’s”, substitute “a vessel’s”.

110 Application of amendments

The amendments of section 293 of the *Biosecurity Act 2015* made by this Schedule apply in relation to any ballast water operation or disposal of sediment that occurs after the commencement of this Schedule.

111 Subsections 294(1) and (2)

Omit “using an Australian vessel’s”, substitute “, for the purposes of subsection 293(1) or (1A), using a vessel’s”.

112 Subsection 294(3)

Omit “an Australian vessel”, substitute “a vessel (the *first vessel*)”.

113 Subsection 294(3)

Omit “the Australian vessel”, substitute “the first vessel”.

114 Paragraph 294(4)(a)

Omit “an Australian vessel”, substitute “a vessel”.

115 Application of amendments

The amendments of section 294 of the *Biosecurity Act 2015* made by this Schedule apply in relation to any ballast water records made after the commencement of this Schedule.

116 Section 295 (heading)

Repeal the heading, substitute:

295 Appropriate ballast water records for vessels

117 Subsection 295(1)

Omit “An Australian vessel”, substitute “A vessel”.

118 Subsection 295(1) (note)

Repeal the note.

119 Subsection 295(2)

Omit “an Australian vessel”, substitute “a vessel (the *first vessel*)”.

120 Subsection 295(2)

Omit “the Australian vessel”, substitute “the first vessel”.

121 Division 3 of Part 5 of Chapter 5

Repeal the Division.

122 Section 297

Repeal the section, substitute:

297 Simplified outline of this Part

This Part provides an offence of disposing of sediment, and sets out exceptions in relation to safety, accidents, and avoiding or minimising pollution. For an Australian vessel, the offence applies whether the vessel is in or outside Australian seas. For a foreign vessel, the offence applies only if the vessel is in Australian seas.

123 Section 298 (heading)

Repeal the heading, substitute:

298 Offence—disposing of sediment

124 Subsection 298(1)

Repeal the subsection, substitute:

Australian vessels

- (1) A person contravenes this subsection if:
- (a) the person is the person in charge or the operator of a vessel;
and
 - (b) the vessel is an Australian vessel; and
 - (c) the vessel disposes of sediment (whether in or outside Australian seas); and
 - (d) the sediment is not disposed of to a sediment reception facility.

Note 1: For exceptions relating to safety, accidents and pollution, see section 299.

Note 2: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 534).

Foreign vessels

- (1A) A person contravenes this subsection if:
- (a) the person is the person in charge or the operator of a vessel;
and
 - (b) the vessel is a foreign vessel; and
 - (c) the vessel is in Australian seas; and
 - (d) the vessel disposes of sediment; and

- (e) the sediment is not disposed of to a sediment reception facility.

Note 1: For exceptions relating to safety, accidents and pollution, see section 299.

Note 2: The physical elements of offences against subsections (2) and (3) are set out in this subsection (see section 534).

125 Subsections 298(2) and (3)

After “subsection (1)”, insert “or (1A)”.

126 At the end of Division 2 of Part 6 of Chapter 5

Add:

299A Report of disposal of sediment relating to safety, accident or pollution

Report of disposal of sediment must be made to Director of Biosecurity

- (1) The person in charge or the operator of a vessel must make a report to the Director of Biosecurity if:
- (a) the vessel disposes of sediment in Australian territorial seas; and
 - (b) the disposal is:
 - (i) for the purpose of ensuring the safety of the vessel in an emergency or saving life at sea; or
 - (ii) accidental; or
 - (iii) for the purpose of avoiding or minimising pollution from the vessel.
- (2) The report must:
- (a) set out the reason for the disposal of the sediment; and
 - (b) be made as soon as practicable, and in any case within 24 hours, after a member of the vessel’s crew becomes aware of the disposal.

Strict liability offence

- (3) A person commits an offence of strict liability if:

- (a) the person is the person in charge or the operator of a vessel;
and
- (b) a report under subsection (1) is required to be made in
relation to the vessel; and
- (c) the report is not made in accordance with this section.

Penalty for contravention of this subsection: 120 penalty units.

127 Section 300

Omit:

This Part gives the Director of Biosecurity and biosecurity officers powers to enforce the provisions of this Chapter.

Under Division 2, a biosecurity officer may require the owner of an Australian vessel to produce records from the vessel's ballast water record system.

substitute:

This Part gives the Director of Biosecurity and biosecurity officers powers to enforce the provisions of this Chapter at a port or offshore terminal within the outer limits of the exclusive economic zone of Australia.

Under Division 2, a biosecurity officer may exercise powers for the purposes of monitoring compliance with this Chapter (such as taking samples of ballast water and requiring ballast water records to be produced).

128 At the end of Division 1 of Part 7 of Chapter 5

Add:

300A Purpose and location of exercise of powers

The powers in this Part may be exercised, for the purposes of this Chapter, at a port or offshore terminal within the outer limits of the exclusive economic zone of Australia.

129 Division 2 of Part 7 of Chapter 5 (heading)

Repeal the heading, substitute:

Division 2—Powers in relation to vessels

130 Before section 301

Insert:

300B Securing vessels

- (1) A biosecurity officer may direct the person in charge or the operator of a vessel to secure the vessel in a manner, and for a period (which must not exceed 48 hours), specified by the biosecurity officer.

Note: The biosecurity officer may give more than one direction relating to the vessel (see subsection 33(1) of the *Acts Interpretation Act 1901*).

Civil penalty provision

- (2) A person who is given a direction under subsection (1) must comply with the direction.

Civil penalty: 120 penalty units.

Note 1: If judicial review is sought in relation to a direction given under subsection (1), the direction remains in force unless a court finally determines the validity of the decision to give the direction (see section 538).

Note 2: A person may commit an offence for failing to comply with a direction given under subsection (1) (see section 305).

Note 3: See also section 572 (general provisions relating to directions).

300C Inspecting and taking samples from vessels

- (1) A biosecurity officer may conduct a physical inspection of a vessel.
- (2) A biosecurity officer may:
- (a) take samples of ballast water from the vessel; or
 - (b) direct a person in charge of the vessel to deliver to the biosecurity officer samples of ballast water from the vessel;
- or

- (c) arrange for another person, with appropriate qualifications or expertise, to take samples of ballast water from the vessel.
- (3) A biosecurity officer may:
 - (a) carry out tests on any samples taken or delivered under subsection (2); or
 - (b) arrange for another person, with appropriate qualifications or expertise, to carry out tests on any of those samples.

Civil penalty provision

- (4) A person who is given a direction under paragraph (2)(b) must comply with the direction.

Civil penalty: 120 penalty units.

300D Asking questions about vessels

- (1) A biosecurity officer may require a person who the biosecurity officer suspects, on reasonable grounds, has information in relation to a vessel to answer questions, or provide information in writing, in relation to the vessel.

Note: A person may commit an offence or contravene a civil penalty provision if the person provides false or misleading information (see section 137.1 of the *Criminal Code* and section 532 of this Act).

Civil penalty provision

- (2) A person who is required to answer questions, or provide information in writing, under subsection (1) must comply with the requirement.

Civil penalty: 120 penalty units.

Note: This section is not subject to the privilege against self-incrimination (see section 635).

131 Section 301 (heading)

Repeal the heading, substitute:

301 Power to require owner of vessel to provide ballast water records

132 Subsection 301(1)

Omit “an Australian vessel”, substitute “a vessel”.

133 Subsection 301(1) (note 1)

Repeal the note.

134 Subsection 301(1) (note 2)

Omit “Note 2”, substitute “Note”.

135 Subsection 302(1)

Repeal the subsection, substitute:

- (1) The Director of Biosecurity or a biosecurity officer may give a direction under this section to the person in charge of a vessel if:
 - (a) the Director or the biosecurity officer is satisfied that:
 - (i) a sample of the vessel’s ballast water indicates that the vessel poses an unacceptable level of biosecurity risk; or
 - (ii) the person in charge or crew of the vessel are not familiar with, or have not implemented, essential shipboard procedures relating to ballast water management that are set out in the ballast water management plan for the vessel; or
 - (iii) the vessel does not have appropriate ballast water records; or
 - (iv) if ballast water were discharged from the vessel, an offence against this Chapter involving the vessel would be committed; or
 - (b) the Director or the biosecurity officer has reasonable grounds for believing that an offence against this Chapter involving the vessel has been committed.

136 Application of amendments

The amendments of section 302 of the *Biosecurity Act 2015* made by this Schedule apply in relation to directions given after the commencement of this Schedule.

137 Paragraph 303(1)(b)

Omit “, or proceeding to, a port in Australian territory or an installation in”.

138 Paragraphs 303(2)(a) and (b)

Omit “port in Australian territory”, insert “port or offshore terminal within the outer limits of the exclusive economic zone of Australia”.

139 After section 304

Insert:

304A Report on failure to comply with direction

- (1) The person in charge or the operator of a vessel must make a report to the Director of Biosecurity if:
 - (a) the person is given a direction under Division 2 or this Division; and
 - (b) the person fails to comply with the direction.
- (2) The report must:
 - (a) set out the reason for the failure to comply; and
 - (b) be made as soon as practicable, and in any case within 24 hours, after a member of the vessel’s crew becomes aware of the failure to comply; and
 - (c) specify (as the case requires) that the failure to comply is:
 - (i) necessary for the purpose of ensuring the safety of the vessel in an emergency or saving life at sea; or
 - (ii) accidental and results from damage to the vessel or its equipment; or
 - (iii) for the purpose of avoiding or minimising pollution from the vessel.

140 Application of amendments

Section 304A of the *Biosecurity Act 2015*, as inserted by this Schedule, applies in relation to any direction given under Division 2 or 3 of Part 7 of Chapter 5 of that Act after the commencement of this Schedule.

141 Paragraph 305(1)(a)

After “person in charge”, insert “or operator”.

142 Paragraph 305(1)(b)

After “direction under”, insert “Division 2 or”.

143 Section 308

Omit “*Legislative Instruments Act 2003*, regulations made for the purposes of this Chapter”, substitute “*Legislation Act 2003*, the determination under section 308A”.

144 At the end of Part 8 of Chapter 5

Add:

308A Determination

- (1) The Director of Biosecurity may, by legislative instrument, make a determination prescribing matters:
- (a) required or permitted by this Chapter to be prescribed by the determination; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Chapter.

Note: The power to make the determination must not be delegated (see paragraph 542(1)(b)).

- (2) Without limiting subsection (1), the determination may provide for any one or more of the following:
- (a) the Director of Biosecurity to enter into agreements;
 - (b) the Director of Biosecurity to make decisions;
 - (c) the Director of Biosecurity to determine matters by notifiable instrument.

Note: The decisions may be reviewable (see subsection 574(2)).

- (3) To avoid doubt, the determination may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

(4) A determination that is inconsistent with the regulations has no effect to the extent of the inconsistency, but the determination is taken to be consistent with the regulations to the extent that the determination is capable of operating concurrently with the regulations.

(5) This section does not limit section 645 (regulations).

145 Subsection 523(1) (after table item 19)

Insert:

19A	Subsection 300B(2)
19B	Subsection 300C(4)
19C	Subsection 300D(2)

146 Subsection 538(1)

After “198”, insert “, 300B”.

147 Paragraph 542(1)(b)

Repeal the paragraph, substitute:

(b) exclude:

- (i) the power to make the determination under section 308A; and
- (ii) functions and powers under subsections 541(1) and 618(2) of this Act.

148 Subsection 574(1) (after table item 13)

Insert:

13A	To refuse to grant an exemption from the requirement in subsection 285A(1) or (2)	The provision of the scheme prescribed for the purposes of section 285B under which the decision is made	A person who applied for the exemption
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149 Subsection 574(1) (at the end of the cell at table item 15, column 2)

Add “(whether the decision is made by the Director of Biosecurity or a survey authority)”.

150 Subsection 574(2)

After “The regulations”, insert “and the determination under section 308A”.

151 Subsection 592(1) (note)

Omit “subsection 289(3)”, substitute “subsection 290A(3)”.

152 Paragraph 635(1)(d)

Omit “and 268”, substitute “, 268 and 300D”.

Schedule 2—Amendments relating to human health

Biosecurity Act 2015

1 Section 3 (paragraph relating to Chapter 2)

Omit “only deals with diseases (listed human diseases)”, substitute “mainly deals with diseases (listed human diseases)”.

2 Subparagraph 4(a)(ii)

After “listed human disease”, insert “or any other infectious human disease”.

3 Subparagraph 4(a)(iii)

After “listed human diseases”, insert “or any other infectious human diseases”.

4 Section 9

Insert:

vector means an arthropod or other living carrier that transports an infectious agent from an infected plant or animal to an individual.

5 Section 43 (paragraph relating to Division 5)

Omit “Regulations may prescribe requirements for destroying disease agents for listed human diseases on aircraft and vessels.”.

6 Section 53

Repeal the section.

7 Before section 205

Insert:

204A Requirements to destroy vectors on incoming or outgoing aircraft or vessels

The regulations may prescribe measures to be taken by operators of incoming aircraft or vessels or outgoing aircraft or vessels to destroy vectors that:

- (a) have the potential to cause, directly or indirectly, a listed human disease or any other human disease; and
- (b) may exist on the aircraft or vessels.

8 Application of amendments

- (1) Section 204A of the *Biosecurity Act 2015*, as inserted by this Schedule, applies in relation to flights and voyages of aircraft and vessels (whether incoming aircraft or vessels or outgoing aircraft or vessels) that commence after this Schedule commences.
- (2) Regulations in force for the purposes of section 53 of the *Biosecurity Act 2015* immediately before this Schedule commences are taken to have been made for the purposes of section 204A (as inserted by this Schedule) (and may be amended or repealed as if they were made for the purposes of that section).

9 Section 235

Omit “Division 4 provides”, substitute “Division 4 allows for directions to be given requiring activities to control vectors to be carried out in first points of entry. Division 4 also provides”.

10 At the end of Division 4 of Part 4 of Chapter 4

Add:

252A Direction to operator of first point of entry to carry out activities to control vectors

- (1) The Director of Human Biosecurity or a chief human biosecurity officer for a State or Territory may, in writing, direct the operator of a first point of entry to carry out specified activities within the area of a first point of entry to control a vector if the Director or chief has reasonable grounds to believe that carrying out those activities in that area is necessary to ensure that the vector has not spread into, or is not likely to become established in, the area.

- (2) A chief human biosecurity officer for a State or Territory may give a direction under subsection (1) to an operator of a first point of entry only if the first point of entry is in the State or Territory.

Offence and civil penalty

- (3) A person commits an offence if:
- (a) the person is given a direction under this section; and
 - (b) the person fails to comply with the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (4) A person who is given a direction must comply with the direction.

Civil penalty: 120 penalty units.

*[Minister's second reading speech made in—
House of Representatives on 15 February 2017
Senate on 29 March 2017]*

(23/17)
