

## **EXPLANATORY STATEMENT**

Issued by Authority of the Director of Biosecurity

*Biosecurity Act 2015*

*Biosecurity (Methods of Ballast Water Management) Approval 2016*

### **Legislative Authority**

The *Biosecurity Act 2015* (the Biosecurity Act) provides the Commonwealth with powers to assess and manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy.

Subsection 274(1) of the Biosecurity Act provides that the Director of Biosecurity may approve a method of ballast water management if the method has been approved by a foreign country in accordance with the *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* (Ballast Water Convention) as if it were in force for the foreign country (whether or not the foreign country has signed the convention).

Subsection 274(2) of the Biosecurity Act provides that the Director of Biosecurity must make a decision to approve a method of ballast water management under subsection 274(1) of the Biosecurity Act, in accordance with the regulations.

Section 66 of the *Biosecurity Regulation 2016* provides that the Director may approve a method of ballast water management under subsection 274(2) of the Biosecurity Act if they are satisfied that any ballast water discharged using the method meets the standard referred to in regulation D-2 of the Ballast Water Convention.

### **Purpose**

The purpose of the *Biosecurity (Methods of Ballast Water Management) Approval 2016* (the Approval) is to list methods of ballast water management that have been approved by a foreign country in accordance with the Ballast Water Convention. For ballast water to be considered managed for discharge under the Biosecurity Act, a vessel must use a method of ballast water management approved by the Director of Biosecurity, including by a method in this Approval.

### **Background**

Most modern vessels use ballast water to maintain stability and structural integrity during cargo operations and voyages. Vessels uptake and discharge water to enable the vessel to operate safely and efficiently in open seas. Whilst ballast water is essential for the safe, efficient and effective operation of vessels, it poses a significant biosecurity risk because it can transport marine pests from one location to another, where they may become established and spread.

In 2004 the International Maritime Organization (IMO) adopted the Ballast Water Convention that aims to prevent the spread of harmful aquatic organisms and pathogens from one region to another through ships' ballast water and sediments. Australia became a signatory to the

Ballast Water Convention in 2005 and will be in a position to ratify after the Biosecurity Act commences.

The Ballast Water Convention will come into force one year after it has been ratified by at least 30 States that represent no less than 35 per cent of the world merchant shipping tonnage. As of 19 April 2016, 49 States have ratified the Ballast Water Convention, representing 34.79 per cent of the world merchant shipping tonnage. The Ballast Water Convention will not be in force when the Biosecurity Act commences on 16 June 2016.

Even though the Ballast Water Convention is not yet in force, Australia as a signatory must not act in a manner that defeats the Ballast Water Convention's intended purpose. The Biosecurity Act and delegated legislation provide a framework for the Department of Agriculture and Water Resources to extend its regulatory reach so that consistent domestic ballast water regulations are in place to reduce the risk of transferring marine pests between Australian ports.

This Approval forms a part of this regulatory framework so that ballast water is managed by approved methods to allow Australia to give effect to its international obligations, and can effectively manage the biosecurity risks associated with ballast water.

### **Impact and Effect**

This Approval supports the ballast water and sediment management regime established under the Biosecurity Act which will prepare Australia to meet its obligations under the Ballast Water Convention. This provides that equivalent methods of managing the biosecurity risks associated with ballast water can be recognised where appropriate and promotes a consistent approach to managing the biosecurity risks associated with ballast water internationally.

Approval of methods of ballast water management will provide more options for vessels when choosing a method of ballast water management, providing flexibility for those vessels in complying with the Biosecurity Act and the Ballast Water Convention.

### **Consultation**

This Approval was not released for public consultation, however, the department consulted with industry representatives during the development of the Biosecurity Act and signing of the Ballast Water Convention.

During the 2015–16 implementation of the Biosecurity Act, the department actively raised awareness among clients, stakeholders and the general public that new Biosecurity legislation commences on 16 June 2016. The department provided extensive opportunities for clients and stakeholders to become informed about the changes to the legislative framework to ensure they understood their obligations and the implications of the changes on their business.

The department also held forums targeting peak industry bodies in Canberra and major city regions in Australia, which were attended by over 700 representatives overall from shipping, ports, petroleum, airlines, airports, freight, cargo, food and beverage industries, research, education, science, plant and animal health and state, territory and federal governments. Meetings and workshops were also held with state and territory governments, other government agencies (including the Department of Health, Department of Defence and the Department of Immigration

and Border Protection), as well as with consultative committees, and environmental groups. Regular biosecurity legislation update notifications were distributed to subscribers across five of the department's subscription lists. International trading partners were also notified via the World Trade Organization Sanitary and Phytosanitary notification.

The consultation undertaken built upon extensive consultation on the Biosecurity Act which began in 2009. During the development process, the department consulted with industry representatives from the cargo, shipping, ports, supply chain and logistics, airline, airport, customs, environment, animal, plant, invasive species, primary production and petroleum/exploration sectors through working groups.

The department consulted with the Office of Parliamentary Counsel in drafting this Approval. The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulation Impact Statement (RIS) for the Biosecurity Bill 2014 (ID: 16609). The OBPR has advised on 31 March 2016 that a further RIS is not required for the purposes of Biosecurity delegated legislation.

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

The Approval is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the Attachment.

### **Details of the *Biosecurity (Methods of Ballast Water Management) Approval 2016***

#### Section 1 - Name

This section provides that the name of this Approval is *Biosecurity (Methods of Ballast Water Management) Approval 2016*.

#### Section 2 - Commencement

This section provides this Approval commences at the same time as section 3 of the Biosecurity Act. Section 3 of the Biosecurity Act commences on 16 June 2016.

#### Section 3 - Authority

This section provides that the Approval is made under subsection 274(1) of the Biosecurity Act.

#### Section 4 – Approved methods of ballast water management

This section provides for the purpose of subsection 274(1) of the Biosecurity Act, the methods of ballast water management listed in the table of this section are approved by the Director of Biosecurity. These methods have also been approved by foreign countries in accordance with the Ballast Water Convention (whether or not the foreign countries have signed the Convention), as in force from time to time, and are included in the list of ballast water management systems, which received Type Approval Certification, as published on the IMO's website at

[www.imo.org/en/OurWork/Environment/BallastWaterManagement/BWMTTechnologies](http://www.imo.org/en/OurWork/Environment/BallastWaterManagement/BWMTTechnologies).

The Director of Biosecurity is satisfied that any ballast water discharged using these methods meets the standard referred to in regulation D-2 of the Ballast Water Convention (see subsection 274(2) of the Biosecurity Act and section 66 of the *Biosecurity Regulation 2016*).

This provides that methods of managing the biosecurity risks associated with ballast water are recognised where appropriate and promotes a consistent approach to managing the biosecurity risks associated with ballast water internationally. Approval of these methods will provide more options for vessel operators when choosing a method of ballast water management, providing flexibility for those vessels in complying with the Biosecurity Act and the Ballast Water Convention.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Biosecurity (Methods of Ballast Water Management) Approval 2016**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

This Legislative Instrument provides for the Director of Biosecurity to approve methods of ballast water management under subsection 274(1) of the *Biosecurity Act 2015* (Biosecurity Act). The approved methods have also been approved by foreign countries in accordance with the *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* (Ballast Water Convention) as if they were in force for those foreign countries (whether or not they have signed the convention). It provides options of ballast water management that vessel operators may be able to use to comply with the Biosecurity Act and the Ballast Water Convention.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Daryl Quinlivan**  
**Director of Biosecurity**