

EXPLANATORY STATEMENT

Issued by Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (Acceptable Ballast Water Exchange Area) Declaration 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.

Section 275(4) of the Biosecurity Act provides that the Director of Biosecurity may, by legislative instrument, declare that a specified area is an acceptable location for ballast water exchange, or that an area that meets requirements specified in the declaration is an acceptable location for ballast water exchange. Subsection (5) goes on to state that a declaration of an area under subsection (4) may specify, for the purposes of paragraph (3)(b), circumstances in which an acceptable ballast water exchange may be conducted in the area.

Section 276 provides that section 270 of the Biosecurity Act, which provides that the discharge of ballast water in Australian seas is an offence, does not apply to a discharge of ballast water from the vessel if the discharge is part of an acceptable ballast water exchange.

Purpose

The purpose of the *Biosecurity (Acceptable Ballast Water Exchange Area) Declaration 2016* (the Declaration) is to prescribe the acceptable location and circumstances for ballast water exchange inside and outside of Australian seas. These requirements mean that Australia is consistent with its international obligations under the *International Convention for the Control and Management of Ships' Ballast Water and Sediments* (Ballast Water Convention) as in force from time to time, available at www.imo.org, when it comes into effect, and can effectively manage the biosecurity risks associated with ballast water.

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. 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 provides 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 Declaration forms a part of this regulatory framework so that ballast water is exchanged in acceptable areas to allow Australia to give effect to its international obligations, and can effectively manage the biosecurity risks associated with ballast water.

Impact and Effect

The Declaration sets out the location and circumstances that vessels inside and outside of Australian seas can conduct ballast water exchange. If not adhered to, the person operating the ballast water on the vessel may be liable for an offence or civil penalty provision under Chapter 5 of the Biosecurity Act.

Consultation

Industry was consulted through the development of the Biosecurity Act and delegated legislation, including Shipping Australia Limited and Ports Australia. Further relevant stakeholders were also engaged on the development of the ballast water regulatory framework.

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 so that they understood their obligations and the implications of the changes on their business. Stakeholders and clients were also consulted and engaged throughout the development of the draft delegated legislation, and were encouraged to provide feedback. Fact sheets supporting the release of draft delegated legislation for public consultation were available on the department's website, and were distributed to stakeholders to provide additional clarity.

Where possible a minimum 60-day consultation period was provided to stakeholders. The 60-day period is in recognition of, and in compliance with the Sanitary and Phytosanitary Measures (SPS) Agreement. The SPS agreement procedures recommends that when a measure that may affect trade is proposed by a country, at least 60 days should be allowed for comments from trading partners before a measure comes into force.

The department received 52 individual submissions in relation to the delegated legislation released for public consultation until 24 March 2016. Submissions were received from state governments, international governments, industry peak bodies, environmental bodies, agricultural producers, importers, freight companies, airlines and universities.

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 and the Australian Government Solicitor in drafting this Declaration, and the Office of Best Practice Regulation advised on 31 March 2016 that the Regulation Impact Statement (RIS) conducted for the Biosecurity Bill 2014 (ID: 16609) was sufficient and a further RIS is not required for the purposes of Biosecurity delegated legislation.

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

The Declaration 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 (Acceptable Ballast Water Exchange Area) Declaration 2016*

Section 1 - Name

This section provides that the name of the Declaration is the *Biosecurity (Acceptable Ballast Water Exchange Area) Declaration 2016* (the Declaration).

Section 2 - Commencement

This section provides that Declaration commences at the same time as section 3 of the *Biosecurity Act 2015* (the Biosecurity Act). Section 3 of the Biosecurity Act commences on 16 June 2016.

Section 3 - Authority

This section provides that the Declaration is made under subsection 275(4) of the Biosecurity Act. Section 275(4) of the Biosecurity Act provides that the Director of Biosecurity may, by legislative instrument, declare that a specified area is an acceptable location for ballast water exchange, or an area that meets requirements specified in the Declaration is an acceptable location for ballast water exchange. Subsection 275(5) of the Biosecurity Act goes on to state

that a Declaration of an area under subsection (4) may specify, for the purposes of paragraph (3)(b), circumstances in which an acceptable ballast water exchange may be conducted in the area.

Section 4 - Acceptable location for ballast water exchange – areas outside Australian seas

This section provides the acceptable location for ballast water exchange outside Australian seas.

Subsection (1) provides that any area of waters that is at least 12 nautical miles from the nearest land is an acceptable location for ballast water exchange. The definition for ‘Australian seas’ is provided in section 9 of the Biosecurity Act, meaning the ‘water (including the internal waters of Australia) within the outer limits of the territorial sea of Australia (including every external territory)’. The *United Nations Convention on the Law of the Sea*, as in force from time to time, defines territorial waters to be the belt of coastal waters extending, at most, 12 nautical miles from the baseline (mean low-water mark) of a coastal state and is available at www.un.org.

It is considered that a vessel conducting ballast water exchange outside of Australian seas is acceptable, because if there are any invasive pests released in the exchange, due to the distance they are unlikely to present any biosecurity risk to disrupt Australia’s marine ecology.

Subsection (2) provides that for this section, ‘from the nearest land’ has the same meaning as in regulation A-1.6 of the Annex to the Ballast Water Convention (available at www.imo.org). This means that the application of this regulation is consistent with the Ballast Water Convention.

Regulation A-1.6 of the Ballast Water Convention provides that ‘from the nearest land’ means the baseline from which the territorial sea is established in accordance with international law, which generally means 12 nautical miles from the nearest land. However, the Ballast Water Convention adds that this definition ‘from the nearest land’ includes off the north-eastern coast of Australia, to mean from specified latitudes and longitudes which cover the Great Barrier Reef Marine Park Area. This is also set out in the *Great Barrier Reef Marine Park Act 1975* (available at www.legislation.gov.au). In effect, this means that the edge of the marine park is considered land under the Ballast Water Convention, so that ballast water exchange is only acceptable if it is conducted outside 12 nautical miles outside of the marine park. This protects the unique ecosystem in the Great Barrier Reef from potential biosecurity threats presented by ballast water exchange.

This section also provides that for a ballast water exchange to be acceptable under this section it must also be conducted in accordance with the requirements under the *Biosecurity Regulation 2016*, as in force from time to time (available at www.legislation.gov.au). This includes reporting ballast water discharges, managing discharges, approval of ballast water management plans, ballast water management certificates and maintaining adequate records.

Section 5 - Acceptable location and circumstances for ballast water exchange – area within Australian seas

This section provides the acceptable location and circumstances for ballast water exchange inside Australian seas.

Any area within Australian seas is an acceptable location for ballast water exchange by a vessel if it meets the following requirements:

- the ballast water discharged from a tank on the vessel during the exchange consists only of potable water; and
- the ballast water was sourced from a municipal water supply or produced on board the vessel; and
- the ballast water has:
 - a relative density of 1.0002 or less at 15°C; and
 - 1 000 hPa atmospheric pressure; and
- in the case of ballast water that was sourced from a municipal water supply—there is documentary evidence (for example, a receipt) on board the vessel stating the place where, and the time when, the water was sourced.

This section also provides that for a ballast water exchange to be acceptable under this section it must also be conducted in accordance with the requirements under the *Biosecurity Regulation 2016*, as in force from time to time (available at www.legislation.gov.au). This includes reporting ballast water discharges, managing discharges, approval of ballast water management plans, ballast water management certificates and maintaining adequate records.

Statement of Compatibility with Human Rights

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

Biosecurity (Acceptable Ballast Water Exchange Area) Declaration 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

Section 275(4) of the *Biosecurity Act 2015* provides that the Director of Biosecurity may, by legislative instrument, declare that a specified area is an acceptable location for ballast water exchange, or that an area that meets requirements specified in the declaration is an acceptable location for ballast water exchange.

The purpose of this Legislative Instrument is to prescribe the acceptable location and circumstances for ballast water exchange inside and outside of Australian seas. These requirements mean that Australia is consistent with its international obligations under the *International Convention for the Control and Management of Ships' Ballast Water and Sediments* when it comes into effect, and can effectively manage the biosecurity risks associated with ballast water.

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
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