EXPLANATORY STATEMENT

Issued by the Authority of the Director of Biosecurity

Biosecurity Act 2015

Biosecurity (Methods of Ballast Water Management) Amendment (2017 Measures No.1) Approval 2017

Legislative Authority

The *Biosecurity Act 2015* (the 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 Act provides that the Director of Biosecurity may, by legislative instrument, 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).

Section 66 of the *Biosecurity Regulation 2016* (the Biosecurity Regulation) provides that the Director may approve a method of ballast water management under subsection 274(2) of the 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) Amendment (2017 Measures No. 1) Approval 2017 (the Amendment Approval) is to amend the *Biosecurity (Methods of Ballast Water Management) Approval 2016* (the Principal Approval). This instrument provides approval from the Director of Biosecurity for a list of 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 Act, a vessel must use a method of ballast water management approved by the Director of Biosecurity, including by a method in the Principal 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, which 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 intends to ratify the Convention. The Convention will come into force internationally on 8 September 2017.

In line with the Convention, the Act and its subordinate legislation provide a framework for consistent domestic ballast water regulations to reduce the risk of transferring marine pests between Australian ports. The Principal Approval forms a part of this regulatory framework to allow Australia to give effect to its international obligations, and to effectively manage the biosecurity risks associated with ballast water.

The Principal Approval supports the ballast water and sediment management regime established under the Act which will prepare Australia to meet its obligations under the Ballast Water Convention. It 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.

Ballast water management methods may include the use of physical equipment and/or the use of certain processes. The particular methods of ballast water management referred to in this instrument are physical machines that can be installed on ships to treat ballast water, and may encompass various technologies that have been developed for this specific purpose. 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 Act and the Ballast Water Convention.

Impact and Effect

The Amending Approval will insert two further methods of ballast water management, which have been approved by a foreign country, and for which the Director of Biosecurity is satisfied that any ballast water discharged using the method meets the standard referred to in regulation D-2 of the Ballast Water Convention. Vessels regulated by the Act and its subordinate instruments will be able to use those methods for the management of ballast water while travelling in Australian seas.

Consultation

In the lead up to the Act coming into force the Department consulted with a wide range of stakeholders through public forums and direct meetings. At each consultation, attendees were advised of the Department's intention to accept International Maritime Organisation (IMO)

Type Approved Ballast Water Treatment Systems when the Act came into force. The original Approval of methods included all Type Approved systems at the time. This Approval adds two treatment systems that have been subsequently Type Approved through the IMO processes. This Approval was not released for public consultation, however, the Department of Agriculture and Water Resources has consulted with maritime and vessel industry representatives such as Shipping Australia Limited, Maritime Industries Australia Limited and Ports Australia.

The Department continues to communicate to industry that when a method of ballast water management, such as a ballast water treatment system, receives Type Approval from a foreign administration, it is recognised that that system has undergone all testing and approval required under the Ballast Water Convention and will be approved for use in Australia. It is industry's expectation that systems that have Type Approval will be accepted in Australia. The two methods being added to the instrument by this Amending Approval have both received Type Approval.

Regulatory impact analysis

Before this Approval was made, its expected impact was assessed using the Preliminary Assessment tool approved by the Office of Best Practice Regulation (OBPR). That assessment indicated that it would have no or low impact on business, individuals and the economy. This assessment has been confirmed by the OBPR (ID21703).

Details

A provision by provision explanation of the Approval is provided in Attachment A.

Statement of compatibility with human rights obligations

Before this Approval was made, its impact on human rights was assessed using tools and guidance published by the Attorney-General's Department. It does not engage any of the applicable rights or freedoms and is fully compatible with human rights as defined in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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

A full statement of compatibility is set out in Attachment B.

Matter incorporated by reference

This Approval does not apply, adopt or incorporate other matter by reference.

Attachment A

Details of the *Biosecurity (Methods of Ballast Water Management Amendment) Approval 2017*

Section 1 - Name

Section 1 provides that the name of the Amendment Approval is the Biosecurity (Methods of Ballast Water Management) Amendment (2017 Measures No. 1) Approval 2017.

Section 2 - Commencement

Section 2 provides for the Amendment Approval to commence the day after this instrument is registered.

Section 3 - Authority

Section 3 provides that this instrument is made under subsection 274(1) of the *Biosecurity Act 2015*.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item 1 – Section 4 (after table item 34)

Item 1 of Schedule 1 inserts new item 34A into the table under Section 4 of the *Biosecurity (Methods of Ballast Water Management) Approval 2016*. Item 34A provides for the LeesGreen® Ballast Water Management System being an approved method of management of ballast water.

This product has been approved by the China Maritime Safety Administration in accordance with the Ballast Water Convention, and is included in the list of IMO approved ballast water management systems, which received Type Approval Certification, as published on the IMO's website at http://www.imo.org/en/OurWork/Environment/BallastWaterManagement/Documents/Table%20of%20BA%20FA%20TA%20updated%20November%202016.pdf.

The Director of Biosecurity is satisfied that any ballast water discharged using this method meets the standard referred to in regulation D-2 of the Ballast Water Convention (see subsection 274(2) of the *Biosecurity Act 2015* and section 66 of the *Biosecurity Regulation 2016*).

Item 2 – Section 4 (after table item 54)

Item 2 of Schedule 1 inserts new item 54A into the table under Section 4 of the *Biosecurity (Methods of Ballast Water Management) Approval 2016*. Item 54A provides for the Semb-Eco LUV 500 Ballast Water Management System being an approved method of management of ballast water.

This product has been approved by Singapore in accordance with the Ballast Water Convention, and is included in the list of IMO approved ballast water management systems, which received Type Approval Certification, as published on the IMO's website at http://www.imo.org/en/OurWork/Environment/BallastWaterManagement/Documents/Table%20of%20BA%20FA%20TA%20updated%20November%202016.pdf.

The Director of Biosecurity is satisfied that any ballast water discharged using this method meets the standard referred to in regulation D-2 of the Ballast Water Convention (see subsection 274(2) of the *Biosecurity Act 2015* and section 66 of the *Biosecurity Regulation 2016*).

Item 3 – At the end of the instrument

Item 3 of Schedule 1 inserts new section 5 at the end of the *Biosecurity (Methods of Ballast Water Management) Approval 2016.* New section 5 provides for the retrospective application of the amendments made by the Amending Approval. It states that the amendments will apply in relation to discharges of ballast water that occur on or after 29 October 2016. This is because the methods themselves were approved by the IMO on 28 October 2016.

The retrospective approval of those methods by the Director of Biosecurity on a date that follows IMO approval as closely as possible would be beneficial to industry. This is because the discharge of ballast water in Australian seas is an offence, unless an exception applies. One such exception is that the ballast water was managed for discharge by a method of ballast water management approved by the Director of Biosecurity before it was discharged. Retrospective approval of the two new methods would align Australia's domestic arrangements for ballast water management with those approved by the IMO and give greater flexibility to vessels when choosing a ballast water management method.

The retrospective application of the amendments would not disadvantage any individuals or impose any liabilities. They will only positively affect vessels travelling in Australian seas.

Attachment B

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) Amendment (2017 Measures No.1) 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 adds two new approved methods of ballast water management to the *Biosecurity (Methods of Ballast Water Management) Approval 2016*. These methods have been approved by foreign countries in accordance with the *International Convention for the Control and Management of Ships' Ballast Water and Sediments* (Ballast Water Convention). It provides more options of ballast water management that vessel operators may be able to use to comply with the *Biosecurity Act 2015* 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