

EXPLANATORY STATEMENT

Issued by the Director of Biosecurity in compliance with section 15J of the
Legislation Act 2003.

Biosecurity Act 2015

Biosecurity (Ballast Water and Sediment) Determination 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.

Section 308A of the Act provides that the Director of Biosecurity may, by legislative instrument, make a determination prescribing matters that are required or permitted by Chapter 5 of the Act or for matters that are necessary or convenient for carrying out or giving effect to Chapter 5 the Act.

Purpose

The purpose of the *Biosecurity (Ballast Water and Sediment) Determination 2017* (the Determination) is to provide detail on the ballast water and sediment management requirements and enforcement in accordance with the Act.

Background

The Act was recently amended by the *Biosecurity Amendment (Ballast Water and Other Measures) Act 2017* (the Amendment Act) in order to strengthen Australia's biosecurity system by better protecting both our marine ecosystems and human health. This included ensuring Australia was in a position to ratify the *International Convention for the Control and Management of Ships' Ballast Water and Sediments* (Ballast Water Convention). To simplify the regulatory framework and clarify Australia's requirements, recent amendments to the *Biosecurity Regulations 2016* repealed Chapter 4, which related to the management of ballast water and sediment, and all detailed regulatory provisions regarding Australian ballast water management are now contained within this Determination.

Impact and Effect

This Determination sets out vital provisions that position Australia to be fully legislatively compliant with the Ballast Water Convention. It facilitates the flexibility necessary to implement the complex ballast water regulatory framework for international and domestic Australian shipping. The development of this legislative instrument ensures clarity for stakeholders and industry so that ballast water provisions are not split over multiple pieces of subordinate legislation.

Consultation

In the lead up to the Act coming into force, and throughout the development of the Biosecurity Amendment Act, the Department of Agriculture and Water Resources has undertaken extensive, targeted, and ongoing consultation with internal and external stakeholders, state and territory governments, industry, and other government agencies.

An Exposure Draft of the Determination was released for public comment on 23 May 2017 and concluded on 14 June 2017. No comments were received that resulted in substantial changes to the Determination.

Consultation has included direct communications with maritime industry representatives including Shipping Australia Limited, Maritime Industries Australia Limited, and Ports Australia, as well as individual industry stakeholders.

Regulatory impact analysis

Before the Determination was made, the expected impacts were 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 (ID21572).

Details

Details of the Determination are set out in [Attachment A](#).

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

Statement of compatibility with human rights obligations

The Determination is compatible with 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 [Attachment B](#).

Matter incorporated by reference

This Determination incorporates several documents by reference. These documents are listed and available at the below webpages:

- The text of the Ballast Water Convention including all regulations are available on the website of the International Maritime Organisation (IMO) at: http://www.bsh.de/de/Meeresdaten/Umweltschutz/Ballastwasser/Konvention_en.pdf
- The IMO led the development of the Ballast Water Convention. Its guidelines (IMO guidelines), as referenced throughout this document and the determination itself refers to several Marine Environment Protection Committee (MEPC) resolutions that have been agreed by the MEPC to support the uniform implementation of the Ballast Water Convention. The department supports these guidelines as their use will ensure international consistency in ballast water management, providing efficiencies for compliance activities and assurance that all aspects of safety and the environment have been considered in the development of the plan. A list of these documents is available at: <http://www.imo.org/en/OurWork/Environment/BallastWaterManagement/Documents/Compilation%20of%20relevant%20Guidelines%20and%20guidance%20documents%20-%20April%202017.pdf>
- The resolution MEPC 71/WP.11/Rev.1 dated 5 July 2017 will be available from 8 September 2017 at: <http://www.agriculture.gov.au/biosecurity/avm/vessels/ballast>
- Table 3: List of ballast water management systems which received Type Approval Certification by their respective Administrations (resolutions MEPC.175(58) and MEPC.228(65)), made by the IMO. This document is available at: <http://www.imo.org/en/OurWork/Environment/BallastWaterManagement/Documents/Table%20of%20BA%20FA%20TA%20updated%20November%202016.pdf>

ATTACHMENT A

Details of the *Biosecurity (Ballast Water and Sediment) Determination 2017*

Part 1 – Preliminary

Section 1 – Name

This section provides that the name of the Determination is the *Biosecurity (Ballast Water and Sediment) Determination 2017*.

Section 2 – Commencement

Subsection 2(1) and the table under it provide that the whole of the Determination commences on the later of:

- the start of the day after it is registered on the Federal Register of Legislation, and
- the commencement of Schedule 1 to the *Biosecurity Amendment (Ballast Water and Other Measures) Act 2017* (the Amendment Act).

Subsection 2(2) provides that any information contained in Column 3 of the table under subsection 2(1) does not form part of this Determination, and information may be added and edited in any published version of this Determination.

Section 3 – Authority

This section provides that this instrument is made under section 308A of the *Biosecurity Act 2015* (the Act). That section provides that the Director of Biosecurity may, by legislative instrument, make a determination prescribing matters required or permitted by Chapter 5 of the Act or for matters that are necessary or convenient to be prescribed for carrying out or giving effect to Chapter 5.

Section 308A was inserted into the Act by the Amendment Act. The Amendment Act will come into force when the *International Convention for the Control and Management of Ships' Ballast Water and Sediments* (Ballast Water Convention) comes into force for Australia on 8 September 2017.

Subsection 4(2) of the *Acts Interpretation Act 1901* provides that a power to make an instrument conferred by legislation may be exercised before the commencement date of the relevant piece of legislation, as if it has commenced.

The Determination was made on 30 August 2017. Section 2 of the Determination provides that it may only commence once Schedule 1 to the *Biosecurity Amendment (Ballast Water and Other Measures) Act 2017* (the Amendment Act) has commenced. Schedule 1 to the Amendment Act contains the provision which authorises the making of the Determination. Schedule 1 to the Amendment Act – and therefore the Determination – commenced on 8 September 2017.

Section 4 – Schedules

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

Section 5 – Definitions

This section provides a number of definitions for the purpose of this Determination:

Act means the Biosecurity Act 2015.

Ballast water discharge report means a report that is required to be given under subsection 267(1) of the Act. That subsection requires the operator of a vessel to give a report if the vessel discharges, or intends to discharge ballast water in Australian territorial seas.

EEZ sourced water has the meaning given by subsection 13(5) of this Determination.

From the nearest land has the same meaning as in regulation A-1.6 of 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, with an exception for nearest land off the north-eastern coast of Australia. Nearest land off the north-eastern coast of Australia is the outer edge of the Great Barrier Reef Marine Park Area and part of the Torres Strait. The latitudes and longitudes defining nearest land off the north-eastern coast of Australia are stated in Regulation A-1.6 of the Ballast Water Convention. In effect, this means that the outer edge of the marine park is considered land under the Ballast Water Convention. This provides additional protection for the Great Barrier Reef from the biosecurity risks associated with ballast water exchange.

Gross tonnage has the meaning given by the Ballast Water Convention. That meaning is:

“...the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor Convention.” This document is available at:

<https://treaties.un.org/doc/Publication/UNTS/Volume%201291/volume-1291-I-21264-English.pdf>.

High seas means seas that are more than 200 nautical miles from the nearest land.

Regulation B-3 has the meaning of Regulation B-3 of the Ballast Water Convention, as set out in MEPC 71/WP.11/Rev.1 dated 5 July 2017 (whether or not that version of regulation B-3 is in force in the Ballast Water Convention). The version of Regulation B-3 contained in MEPC 71/WP.11/Rev.1 was agreed at the MEPC meeting number 71 in July 2017 and will be distributed and made publically available when the Ballast Water Convention comes into force. The draft resolution accompanying the version of Regulation B-3 agreed to at MEPC 71 resolves that Parties to the Convention should implement the draft amended Regulation B-3 as agreed in MEPC 71/WP.11/Rev.1 immediately after entry into force of the Convention, with a view to avoiding the creation of a dual treaty regime during the time period between the entry into force of the Convention and the entry into force of the amended Regulation B-3.

Section 5 also notes that a number of expressions used in this Determination are defined in the Act, including:

- approved arrangement
- Australian seas
- Australian territorial seas
- Ballast Water Convention
- ballast water exchange
- ballast water management
- ballast water reception facility
- sediment reception facility.

Part 2 – Reporting ballast water discharges

Section 6 – Information that must be included in ballast water discharge report

This section provides that for the purposes of paragraph 267(2)(a) of the Act, a ballast water discharge report must include the information prescribed by this section. Paragraph 267(2)(a) of the Act provides that the determination will prescribe information required in a ballast water discharge report in relation to an intended discharge, or an occurred discharge, of ballast water from a vessel in Australian territorial seas. Required information includes:

- information identifying the vessel and describing tanks and pumps used to manage the vessel's ballast water
- contact details of the person responsible for the vessel's ballast water
- details of the voyage during which a discharge is expected to occur or has occurred
- details of the ballast water management certificate, management plan and records for the vessel
- whether the vessel intends to dispose of sediment
- whether any intended discharge or occurred discharge would be covered by an exception under Part 3 of Chapter 5 of the Act and any details of that exception and how conditions in relation to the exception will be met
- the location of intended or occurred discharges
- timing of intended or occurred discharges, and
- the estimated volume of ballast water that will be or has been discharged.

The purpose of the section is to set out the information that must be included in the ballast water discharge report, in order to monitor compliance with the Act and assess the biosecurity risk associated with each discharge.

Section 7 – Manner and time for giving ballast water discharge report

This section prescribes the manner and time in which a ballast water discharge report, as required by paragraph 267(2)(b) of the Act, must be given.

Subsection 7(1) provides that a ballast water discharge report must be given in writing, and must be given to the Director of Biosecurity. The report must be in a form or forms approved by the Director of Biosecurity, as per paragraph 267(2)(d) of the Act, including electronically as provided by this subsection.

Subsection 7(2) provides that for the purposes of 267(2)(c) of the Act, a ballast water discharge report must be given at least 12 hours before the discharge to which the report relates is intended to occur, or if that is not possible, at the time specified by a biosecurity official.

This section will enable biosecurity officials to assess and take steps to manage any biosecurity risk that may exist as a result of that discharge in a timely way. By prescribing that a report would be required to be provided before ballast water is discharged, biosecurity officials can assess the biosecurity risks that may be present before ballast water is discharged. This also provides an opportunity for biosecurity risks to be managed before ballast water is discharged.

Subsection 7(2) allows flexibility where the standard timeframe cannot be met and can accommodate unexpected or unplanned discharges while still enabling biosecurity officials to monitor compliance and assess risk.

Section 8 – Exceptions to requirement to give ballast water discharge report

This section provides a number of exceptions to the requirement of giving a ballast water discharge report. Subsection 267(3) of the Act provides that the determination may prescribe exceptions to the requirement to give a ballast water discharge report.

Firstly, an operator of a vessel is not required to give a ballast water discharge report, if biosecurity risks associated with discharges of ballast water from the vessel are managed in accordance with an approved arrangement covering the operator of the vessel.

Where an operator can demonstrate that biosecurity risks are being appropriately managed through an approved arrangement, it is appropriate that the regulation of that operator can be reduced to streamline their operations.

Secondly, an operator of a vessel is not required to give a ballast water discharge report, if the operator is satisfied that:

- immediately before the intended discharge or discharge, at least 95% of the ballast water in the relevant tank on the vessel will have been or was taken up within the outer limits of the exclusive economic zone (EEZ) of Australia; and
- the vessel has not left the waters within the outer limits of the exclusive economic zone of Australia since the ballast water was taken up.

This exception is intended to apply to vessels which are moving from one Australian port to another Australian port. It ensures that vessels undertaking short movements between Australian ports do not need to report intended ballast water discharges, on the basis that there is insufficient time on many of these movements to submit a report. These vessels will still be required to manage their ballast water. Biosecurity officials will verify compliance with the requirements by checking ballast water records.

Thirdly, an operator of a vessel is not required to give a ballast water discharge report, if all of the following apply to the circumstances:

- the operator has previously given a report under section 267 of the Act in relation to an intended discharge, or occurred discharge, of ballast water from the vessel in Australian territorial seas,
- the operator is satisfied that, immediately before giving the report, at least 95% of the ballast water in the relevant tank on the vessel will have been or was taken up in the territorial seas of a foreign country or the high seas, and
- since the discharge to which the report related, the vessel has not left the waters, within the outer limits of the exclusive economic zone of Australia.

In these circumstances, vessels carrying international ballast water that have previously provided a report, will not then need to report further movements of the same ballast water within Australian seas. This is to avoid a situation where internationally arriving ships would have to report domestic ballast water movements when other domestic ballast water movements are not required to be reported. This also avoids the department having to manage repeated and unnecessary reporting of the same ballast water.

Fourthly, an operator of a vessel is not required to give a ballast water discharge report, if an agreement that relates to the vessel is in force under paragraph 20(1)(a) that exempts the operator from having to give a ballast water discharge report.

In this circumstance an agreement may be entered into between the Director of Biosecurity and the vessel owner to ensure the biosecurity risks are adequately managed so as to meet Australia's appropriate level of protection. This may include a requirement not to report ballast water discharges if the biosecurity risk is adequately managed.

Part 3 – Management of discharge of ballast water

Division 1 – Approving methods of ballast water management

Section 9 – Application for approval of method of ballast water management

This section outlines the requirements that must be present in an application for approval of a method of ballast water management by the Director of Biosecurity.

Firstly, for the purposes of subsection 273(1) of the Act, an application for approval of a method for ballast water management must be made according to a number of criteria, including that the application is in writing, and in a form approved by the Director of Biosecurity. This provision also requires the application to be consistent with and include information required by the IMO guidelines, if the application is for approval of a ballast water management system, or prototype ballast water treatment technology, or any other method of ballast water management. The purpose of this subsection is to ensure any methods used to manage ballast water are approved by Australia and are consistent with the Ballast Water Convention.

Secondly, for the purposes of subsection 273(3) of the Act, the Director of Biosecurity may approve a method of ballast water management if the application complies with requirements set out under subsection 9(1). This provision empowers the Director of Biosecurity to approve ballast water management methods where they are consistent with international standards provided by the Ballast Water Convention.

Section 10 – Method of ballast water management – approval of method approved by foreign country

This section provides for the methods of ballast water management that would be approved for the purposes of section 274 of the Act. The determination may specify that a method of ballast water management is approved if that method has been approved by a foreign country in accordance with the Ballast Water Convention. This includes the method of a ballast water management system.

This section provides that a method of ballast water management is approved for use in Australian seas if the method is included in the document (the approval document) entitled Table 3: List of ballast water management systems which received Type Approval Certification by their respective Administrations (resolutions MEPC.175(58) and MEPC.228(65)), made by the IMO, as in force from time to time.

The approval document is a list of ballast water management systems that have received Type Approval in accordance with the Ballast Water Convention from their respective Administrations, or countries. The purpose of this section is to ensure that equivalent methods of managing the biosecurity risks associated with ballast water, which have been approved by other countries in accordance with the Ballast Water Convention, are also accepted for use in Australia. This promotes an internationally consistent approach to management of ballast water for industry.

It is also appropriate to incorporate the approval document by reference as it is maintained by the IMO and will be updated regularly when new ballast water management systems receive Type Approval in accordance with the Ballast Water Convention. Incorporating the approval document by reference will not impede accessibility to the law as it is publically available and easily accessible. The incorporation of documents from time to time is enabled by section 308 of the Act, which provides that despite subsection 14(2) of the *Legislation Act 2003*, the Determination may make provision in relation to a matter by applying, adopting or

incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

Division 2 – Ballast water exchange

Section 11 – Management of ballast water exchange

This section provides that for the purposes of paragraph 275(1)(a) of the Act, the proportion by volume of ballast water in a vessel's tank that must have been taken up in an acceptable ballast water exchange conducted by the vessel is 95%. This is in accordance with Regulation D-1 of the Ballast Water Convention and in recognition of this being the internationally accepted standard to reduce the risk of contamination of low risk ballast water with any residual high risk ballast water in the tank. This is also in recognition of the fact that many vessels are unable to pump out more than 95% of ballast water due to design limitations.

Section 12 – Vessels excluded from the operation of section 275 of the Act

Section 275 of the Act provides that ballast water discharged has been managed for discharge if at least the prescribed proportion of the ballast water in the tank immediately before the discharge had been taken up in an acceptable ballast water exchange, and that at the time of the discharge the vessel has appropriate ballast water records.

Subsection 12(1) of this Determination provides that for the purposes of paragraph 275(1)(c) of the Act, a vessel is excluded from the operation of section 275 of the Act if:

- under regulation B-3 of the Ballast Water Convention, the vessel would not be permitted to manage ballast water for discharge using ballast water exchange (whether or not the version of regulation B-3 that so provides is in force under the Convention), and
- a determination under subsection 12(3) is not in force in relation to the vessel, which may for vessels not being excluded from the operation of section 275.

As provided by Section 5 (also see above), **regulation B-3** is the version set out in MEPC 71/WP.11/Rev.1 dated 5 July 2017 (whether or not that version of regulation B-3 is in force in the Ballast Water Convention).

The agreed amendment to regulation B-3 requires ships to phase out the use of ballast water exchange (required by regulation D-1) in favour of a method that is compliant with the regulation D-2 standard for ballast water discharge (D-2 standard). Most ships will meet the D-2 standard by installing an approved ballast water management system. The amendment to regulation B-3 means that new ships, i.e. ships constructed on or after 8 September 2017, will be required to meet the D-2 standard from the date they are put into service.

For existing ships, that is, ships constructed before 8 September 2017, the date for compliance with the D-2 standard is linked with the renewal survey of the ship associated with the International Oil Pollution Prevention Certificate (IOPP) under Annex I to the International Convention for the Prevention of Pollution from Ships (MARPOL). The text of MARPOL is accessible at: <http://www.mar.ist.utl.pt/mventura/Projecto-Navios-I/IMO-Conventions%20%28copies%29/MARPOL.pdf>.

For existing ships, this would be the first or second five-year renewal survey after 8 September 2017:

- By the first renewal survey: this applies when the first renewal survey of the ship takes place on or after 8 September 2019, or a renewal survey has been completed on or after 8 September 2014 but prior to 8 September 2017.

- By the second renewal survey: this applies if the first renewal survey after 8 September 2017 takes place before 8 September 2019. In this case, compliance must be by the second renewal survey (provided that the previous renewal survey has not been completed in the period between 8 September 2014 and 8 September 2017).

An existing ship to which the IOPP renewal survey under MARPOL Annex I does not apply shall meet the D-2 standard from 8 September 2024.

Subsection 12(2) provides that the owner of a vessel may apply to the Director of Biosecurity to determine that the vessel not be excluded from the operation of section 275 of the Act, so that it could continue to rely on the ballast water exchange exception to the discharge offence.

Subsection 12(3) provides that the Director of Biosecurity may determine by written notice to the applicant, that a vessel is not excluded if he or she is satisfied of the following:

- the vessel operates predominantly in Australian seas or the high seas
- the vessel operates predominantly within the outer limits of the exclusive economic zone of a foreign country or the high seas, or
- the vessel is a vessel of a kind described in regulation A-5 of the Ballast Water Convention.

For vessels that operate internationally, this subsection is in accordance with regulations A-4 and A-5 of the Ballast Water Convention. Regulation A-4 of the Ballast Water Convention provides that an Administration may exempt vessels from the requirements of Regulation B-3 and C-2 (additional measures for managing ballast water determined by individual countries) based on a risk assessment.

Whilst Australia is not obligated to extend the requirements of the Ballast Water Convention to vessels that operate solely in Australian seas, it is intended that the requirements to meet the D-2 standard will be applied to vessels operating only in Australian seas as the D-2 standard significantly improves the biosecurity management of ballast water. Despite this, it is recognised that some vessels will not be able to meet the D-2 standard and as a result this subsection provides the necessary flexibility to exempt those vessels.

This subsection also provides flexibility to consider exemptions for vessels that operate predominantly in Australian seas or the waters of a foreign country and travel internationally only for dry docking. These exemptions will be considered in line with Regulation A-4 of the Ballast Water Convention and in consultation with the relevant Administrations.

Regulation A-5 provides that equivalent compliance shall be determined by the Administration (or State party to the Ballast water Convention), taking into account IMO guidelines, for vessels used solely for recreation or primarily used for search and rescue, of less than 50 metres in length overall, and with a maximum ballast water capacity of 8 cubic metres.

The Director of Biosecurity may also refuse to make the determination.

Subsection 12(4) provides that if the Director of Biosecurity makes a determination to allow a vessel to continue to rely on ballast water exchange, it must also specify the period that the determination is in force.

Subsection 12(5) provides that the Director of Biosecurity may also revoke a determination made under subsection 12(3).

Subsection 12(6) provides that such revocation does not limit the effect of section 33(3) of the *Acts Interpretation Act 1901*.

Subsection 12(7) provides that decisions made under subsections 12(3), 12(4) and 12(5) of this section are reviewable decisions and that the relevant person (who can apply for review of a decision under sections 576 and 578 of the Act) is the person who applied for the determination.

Section 576 of the Act provides that a relevant person for a reviewable decision may apply for internal review of the decision (not made by the Director of Biosecurity personally) in the first instance. Section 578 of the Act provides that a relevant person also may apply to the Administrative Appeals Tribunal for review of the decision made by the internal reviewer under section 576, or review of a decision made by the Director personally.

Section 13 – Acceptable locations for ballast water exchange

Subsection 13(1) provides that this section applies for the purpose of paragraph 275(3)(a) of the Act. Subsection 13(1) also notes, as provided by paragraph 275(3)(a) of the Act, that a ballast water exchange that is conducted in an area prescribed by this section is an acceptable ballast water exchange if it is conducted in accordance with requirements prescribed in Section 14.

Subsection 13(2) specifies that this section does not apply in relation to a vessel if at least 95% of the total of the relevant ballast water on the vessel consists of ballast water taken up in the high seas, which is provided for by section 19 of this Determination.

Subsection 13(3) details acceptable exchange areas for vessels whose ballast water was sourced outside of the EEZ, and for Australian vessels that are not in Australian seas. For these vessels, the acceptable ballast water exchange areas must be:

- at least 200 nautical miles from the nearest land
- if the vessel is unable to conduct a ballast water exchange at least 200 nautical miles from the nearest land—at least 50 nautical miles from the nearest land, or
- if the vessel is unable to conduct a ballast water exchange in an area at least 200 nautical miles or 50 nautical miles from the nearest land:
 - at least 12 nautical miles from the nearest land, or a lesser distance determined under section 15, and
 - outside the Ningaloo ballast water exclusion area as prescribed in subsection 13(6).

These requirements are consistent with those specified in Regulation B-4 of the Ballast Water Convention, including their application to Australian ships when not in Australian seas, and are aimed to minimise the biosecurity risks posed by ballast water during the process of a ballast water exchange. Regulation B-4 enables an Administration to designate areas where a ship may conduct ballast water exchange, taking into account the IMO guidelines. In accordance with this, if a ship is unable to meet the Regulation B-4 requirements of either 200 or 50 nautical miles from nearest land, Australia has designated the area outside 12 nautical miles from nearest land as acceptable for ballast water exchange.

Subsection 13(4) details acceptable exchange areas for vessels which have sourced ballast water from within the EEZ. For these vessels, ballast water exchange must be conducted:

- at least 12 nautical miles from the nearest land, or a lesser distance determined under section 15, and
- outside the Ningaloo ballast water exchange exclusion area as prescribed by subsection 13(6).

Subsection 13(5) provides that a vessel's ballast water is considered to be *EEZ sourced water* if at least 95% of the relevant ballast water on the vessel immediately before a discharge of ballast water is taken up within the outer limits of the exclusive economic zone of Australia.

Subsection 13(6) provides that the *Ningaloo ballast water exchange exclusion area* is the area bounded by the line starting at the point described in item 1 of the following table and running sequentially as described in the table.

Ningaloo ballast water exchange exclusion area	
Item	Description
1	The point of intersection of the outer limit of the territorial sea, north of North West Cape Western Australia, by the meridian of longitude 114°14'21"E
2	North along that meridian to its intersection by the outer limit of the line every point of which is 20 nautical miles from the nearest land
3	Generally south-westerly along that outer limit to its intersection by the parallel of latitude 24°01'53"S
4	East along that parallel to its intersection by the outer limit of the territorial sea
5	Generally north-easterly along that outer limit to the starting point

Note: Geographic coordinates in this subsection are expressed in terms of the Geocentric Datum of Australia 1994 (commonly known as GDA94).

This exclusion area essentially designates the area 20 nautical miles from nearest land adjacent to the Ningaloo Marine Park as acceptable for ballast water exchange. This provides additional protection for the Ningaloo Marine Park from the biosecurity risks associated with ballast water exchange in recognition of the significant environmental value of the Ningaloo Marine Park.

Section 14 – Requirements for ballast water exchange

This section provides the requirements for a ballast water exchange that is conducted by a vessel in an acceptable area under section 13 of the Determination for the purposes of section 275(3)(a) of the Act. This ensures that ballast water exchange requirements are consistent with Regulation B-4 and Regulation D-1 of the Ballast Water Convention so as to minimise the biosecurity risks posed by ballast water exchange.

Subsection 14(a) provides that if the ballast water exchange is in an acceptable location detailed under paragraph 13(3)(a) or (b), the exchange must also be conducted in water that is at least 200 metres deep. These depth requirements are consistent with Regulation B-4 of the Ballast Water Convention and add to the minimisation of biosecurity risks posed by ballast water during ballast water exchange.

If the ballast water exchange occurs in an acceptable location detailed under paragraph 13(3)(c) or subsection 13(4), the exchange must also be conducted in water that is 50 metres deep, or a shallower depth determined under section 15. Together with the requirement to undertake ballast water exchange a minimum of 12 nautical miles from nearest land, this depth requirement is aimed at minimising the biosecurity risk associated with ballast water exchange.

Subsection 14(b) requires that at least 95% volumetric exchange of ballast water in the relevant tank must occur during the ballast water exchange.

Subsection 14(c) requires that the exchange must occur using an acceptable method referred to in the IMO guidelines for ballast water exchange.

Subsection 14(d) requires that after the exchange occurs, no more ballast water may be taken up into the tank from an area other than an acceptable location determined for the purposes of section 13, and no ballast water may be transferred to the tank from another that contains ballast water that has not been managed for discharge. These requirements ensure that ballast water that has been effectively managed in accordance with the Ballast Water Convention is not mixed with unmanaged, high risk ballast water prior to discharge. If mixing were to occur, discharge of this ballast water would pose an unacceptable biosecurity risk.

Section 15 – Determining locations and depths for ballast water exchange

This section provides that the Director of Biosecurity may determine an acceptable location that is a lesser distance than prescribed in section 13 and lesser depth than prescribed in section 14, for ballast water exchange.

Subsection 15(1) provides that on application by the owner of a vessel, the Director of Biosecurity may determine a lesser distance that the ballast water exchange may occur for the purposes of subparagraph 13(3)(c)(i) or paragraph 13(4)(a). Further, the Director of Biosecurity may also determine a shallower depth for exchange of ballast water for the purposes of subparagraph 14(1)(a)(ii).

Subsection 15(2) provides that the Director of Biosecurity, may, by written notice to the applicant, determine the distance or depth at which the ballast water exchange must occur; the distance or depth at which ballast water exchange must occur subject to conditions; or may refuse to determine a distance or depth for ballast water exchange. Conditions may be applied to this determination to ensure the biosecurity risks are effectively managed. This is not a reviewable decision as the assessment of any application to undertake ballast water exchange at a lesser distance than 12 nautical miles or depth than 50 metres would take into account all available evidence relating to safety, operations and biosecurity risk. In line with the Ballast Water Convention, Australia has designated these limits based on the outcomes of research to determine the limits that would most appropriately manage the biosecurity risk and have the least impact on industry.

It is appropriate that the Director of Biosecurity may determine acceptable locations and depths upon application from the owner of the vessel as it gives flexibility which is necessary to take into account varying circumstances which may fall outside of the parameters stipulated by sections 13 and 14, but may nevertheless manage the risk posed by a ballast water exchange to Australia's acceptable level of protection.

Section 32 of the Determination, made for the purposes of paragraph 293(2)(c) also applies to a decision made under subsection 15(2). Section 32 details the requirements and timeframes for a written decision made by the Director of Biosecurity.

Division 3 – Ballast water reception facility

Section 16 – Approval of discharge to ballast water reception facility

This section provides that an application may be made for approval to discharge ballast water at a ballast water reception facility.

Subsection 16(1) provides that under subsection 278(1) of the Act, an application for the Director of Biosecurity to approve the discharge of ballast water to a ballast water reception facility in Australian territory (as defined in the Act), and the manner in which the ballast

water is to be treated or disposed of at the facility, must be made in writing and in a form approved by the Director of Biosecurity.

Under subsection 278(2) of the Act, the Director of Biosecurity may approve or refuse to grant approval of ballast water discharge to a ballast water reception facility in Australian territory. Subsection 278(3) provides that in making this decision, the Director of Biosecurity must have regard to this Determination. Subsection 16(2) provides that in order to grant the approval, the Director must be satisfied that the ballast water reception facility complies with the requirements set out in the IMO guidelines for ballast water reception facilities. A ballast water reception facility should be capable of receiving ballast water from ships so as not to create a risk to the environment, human health, property and resources arising from the release to the environment of harmful aquatic organisms and pathogens. In particular, where ballast water from a reception facility is disposed into the aquatic environment, it should at least meet the D-2 standard of the Ballast Water Convention. In order to ensure ballast water reception facilities meet these standards, the assessment of an application to discharge to a ballast water reception facility must include whether the facility complies with the IMO guidelines, so as to ensure safety and biosecurity risks will be adequately managed. Whether the facility complies with the IMO guidelines is one consideration in making a decision under subsection 278(2), and that decision is a reviewable decision under section 574 of the Act (item 10 of the table under subsection 574(1)).

Division 4 – Discharge covered by prescribed conditions

Subdivision A – Discharge covered by prescribed conditions

Section 17 – Application of Subdivision

This section provides that Subdivision A of Division 4 of the Determination applies for the purposes of section 278A of the Act. Subsection 270(4) of the Act provides that if a ballast water discharge meets conditions in section 278A (and various other conditions under paragraphs 270(4)(b) to 270(4)(d)), then the discharge will not constitute an offence under subsection 270(1). Section 278A enables the Director of Biosecurity to prescribe conditions in this Determination for the purposes of section 278A.

Section 18 – Potable water

This section provides that the condition in section 278A of the Act is met, and therefore the relevant discharge excepted from constituting an offence, if:

- the proportion by volume of ballast water in a vessel's tank immediately before discharge is at least 95% potable (fresh) water
- the ballast water was sourced from a municipal water supply or produced on board the vessel, and
- there is documentary evidence on board the vessel stating the place and time where the municipal water was sourced, or, documents confirming that the water was produced on board the vessel and that the equipment generating the water was operated appropriately.

Section 19 – Water taken up in the high seas

This section provides that the condition in section 278A of the Act is met, and therefore the relevant discharge excepted from constituting an offence, if the proportion by volume of water in the tank of the vessel immediately before discharge consists of at least 95% water taken up in the high seas. Ballast water taken up on the high seas is considered to present a low biosecurity risk. This exception ensures that vessels that operate predominantly in Australian seas and the high seas, that may uptake ballast water on the high seas as part of

their operations, for example fishing vessels, do not commit an offence if they discharge this low risk water in Australian seas.

This section does not apply for vessels that have been excluded from the operation of section 275 of the Act by section 12 of this Determination. This is to ensure there is no loop hole that would allow vessels that are required to meet the D-2 standard of the Ballast Water Convention to rely on uptake in the high seas as an exception to the discharge offence, as for these vessels, uptake in the high seas could be taken to be uptake as part of a ballast water exchange.

Section 20 – Ballast water discharged in accordance with agreements

This section provides that the condition in section 278A of the Act is met, and therefore the relevant discharge is exempted from constituting an offence, if the ballast water discharge is managed in accordance with an existing agreement.

Subsection 270(4) of the Act provides that if a ballast water discharge meets conditions in section 278A, then the discharge will not constitute an offence under subsection 270(1). Section 278A enables the Director of Biosecurity to prescribe conditions in this Determination for the purposes of section 278A.

Subsection 20(1) provides that conditions under section 278A of the Act are met if:

- an agreement between the owner of the vessel and the Director of Biosecurity is in force at the time the discharge occurs
- the discharge occurs in accordance with the agreement, and
- all conditions specified in the agreement have been complied with.

Subsection 20(2) also enables the Director of Biosecurity to:

- enter into agreements for the purposes of subsection 20(1)
- impose conditions in the agreements
- exempt operators of vessels from having to give a ballast water discharge report in the agreement, and
- revoke agreements on the request of the vessel owner, or if the Director of Biosecurity is satisfied that a condition in the agreement has not been complied with or that the risk of discharge of ballast water has increased.

Subsection 20(3) provides that a decision to revoke or vary an agreement under subparagraph 20(2)(d)(ii) is a reviewable decision and that the owner of the vessel is the relevant person. Section 576 of the Act provides that a relevant person for a reviewable decision may apply for internal review of the decision (not made by the Director of Biosecurity personally) in the first instance. Section 578 of the Act provides that a relevant person also may apply to the Administrative Appeals Tribunal for review of the decision made by the internal reviewer under section 576, or review of a decision made by the Director personally.

Section 21 – Ballast water discharge in same risk area

Subsection 21(1) provides that a condition for the discharge of ballast water from a vessel under section 278A of the Act is met, if:

- immediately before the discharge, at least 95% of the relevant ballast water was taken up in a same risk area specified in the notifiable instrument provided by subsection 21(2), and
- the discharge also occurred in that area.

Subsection 21(2) provides that the Director of Biosecurity may, by notifiable instrument, specify areas for the purposes of paragraph 21(1)(a), that is, same risk areas. It also notes that this power may be delegated, as provided by subsection 542(1) of the Act.

Section 22 – Australian vessels complying with overseas laws

This section provides that the condition in section 278A of the Act is met in relation to a discharge of ballast water from a vessel if:

- the vessel is an Australian vessel that is not in Australian seas
- the vessel is in the territorial seas of a State that is a party to the Ballast Water Convention, and
- the discharge complies with all the laws of the State relating to discharges of ballast water.

This means that an Australian vessel is not liable for the offence of discharging ballast water under subsection 270(1) of the Act if it complies with the relevant laws of the jurisdiction where the discharge occurs, if that jurisdiction is party to the Ballast Water Convention. This is appropriate as it recognises ballast water management regulations in other jurisdictions who are also party to the Ballast Water Convention. Where an Australian vessel neither complies with the relevant laws of the foreign jurisdiction, nor falls under any of the exceptions to the Australian offence of discharging ballast water, it can be liable for the offence under both jurisdictions. However, the intention behind the legislative scheme is not to prosecute such a discharge twice. Rather, it intends to ensure that all Australian vessels remain subject to the Ballast Water Convention, regardless of where the ballast water discharge occurs. This reflects the requirement under the Ballast Water Convention that all party States must ensure their national vessels are subject to the Ballast Water Convention, regardless of where the ballast water discharge occurs.

The Convention requires that whenever a violation of the Convention occurs in a party's waters, the party shall either cause proceedings to be taken in accordance with its laws; or provide to the Administration of the ship information and evidence gathered in relation to the violation has occurred. The Administration must then investigate the violation.

This is reflected in the department's policies on ballast water management and is the only plausible scheme which ensures all vessels belonging to States party to the Ballast Water Convention are appropriately managed, even if they discharge ballast water in the jurisdiction of a non-party State.

Subdivision B – Grant of exemption for discharge

Section 23 – Grant of exemption for discharge

This section provides that for the purposes of subsection 280(3) of the Act, the Director of Biosecurity may grant an exemption for the discharge of ballast water between specified ports or locations where the biosecurity risks for the discharge are appropriately managed.

Section 280 of the Act outlines a process whereby an operator may apply for an exemption from the offence of discharging ballast water. This occurs for discharges that are to be connected with a vessel's voyage between specified ports or locations and where ballast water is expected to be taken up in one or more of those ports or locations. Subsection 280(3) of the Act provides that the Director of Biosecurity must make a decision in accordance with this Determination.

Subsection 23(1) of this Determination provides that the Director of Biosecurity may grant an exemption under subsection 280(2) of the Act for one or more discharges of ballast water

from a vessel if a risk assessment has been conducted and it indicates that the level of biosecurity risk associated with the discharge or discharges is acceptable. The Director of Biosecurity must also take into account the IMO guidelines for risk assessment in making the decision to grant an exemption under this subsection. This is consistent with the Ballast Water Convention, whereby exemptions may only be granted on the basis of a risk assessment. A risk assessment must be consistent with the IMO guidelines for risk assessment.

Subsection 23(2) provides that the Director of Biosecurity may also grant an exemption where the biosecurity risks associated with discharges of ballast water from the vessel are managed in accordance with an approved arrangement covering the operator of the vessel. This provision does not limit the operation subsection 23(1).

A decision to refuse to grant an exemption, or a decision to impose a condition on an exemption, is a reviewable decision under section 574 of the Act (items 11 and 12 of the table under subsection 574(1)). That section also provides that the relevant person is the person who applied for the exemption.

Section 576 of the Act provides that a relevant person for a reviewable decision may apply for internal review of the decision (not made by the Director of Biosecurity personally) in the first instance. Section 578 of the Act provides that a relevant person also may apply to the Administrative Appeals Tribunal for review of the decision made by the internal reviewer under section 576, or review of a decision made by the Director personally.

Part 4 – Ballast water management plans and ballast water management certificates

Division 1 – Exemptions from the requirement to have ballast water management plans and certificates

Section 24 – Exemptions from the requirement to have ballast water management plans and certificates

This section provides that for the purposes of subsection 285A(3) of the Act, a vessel used only for recreational use that is of less than 400 gross tonnage is exempt from the requirement prescribed in subsections 285A(1) and (2) of the Act to have a ballast water management plan and management certificate. Subsection 285A of the Act provides that this Determination may prescribe vessels that are exempt from the requirements of subsections 285A(1) and 285A(2).

Section 25 – Scheme to provide further exemptions from requirement to have ballast water management plan and certificate

This section provides for a scheme for further exemptions from the requirement for a vessel to have a ballast water management plan and certificate, in addition to the exemption outlined in section 24 of this Determination.

Subsection 25(1) provides that this section applies for the purposes of section 285B of the Act, which provides that this Determination may prescribe a scheme for the Director of Biosecurity or a survey authority to provide further exemptions from the requirement for a vessel to have a ballast water management plan and certificate under this section.

Subsection 25(2) provides that an application for an exemption from the requirement to have a ballast water management plan and certificate may be made by the owner of a vessel for the Director of Biosecurity to grant an exemption to the vessel from the requirement in subsection 285A(1) or 285A(2) of the Act.

Subsection 25(3) states that the Director of Biosecurity may, by written notice to the applicant:

- grant the exemption,
- grant the exemption subject to conditions, or
- refuse to grant the exemption.

Section 32 also applies to a decision made under subsection 25(3). Section 32 details the requirements and timeframes for a written decision made by the Director of Biosecurity under various provisions, including subsection 25(3).

This decision is not reviewable as the Ballast Water Convention has specific requirements for eligibility for exemption from ballast water management plans and certificates, which Australia is obligated to implement. The only vessels that are eligible for exemptions are vessels that fulfil requirements under the Ballast Water Convention. This decision therefore arises from an obligation to act in a certain way upon the occurrence of a specified set of circumstances, and has very little for merits review to operate upon. It is therefore appropriate not to provide merits review.

Division 2 – Ballast water management plans

Section 26 – Ballast water management plan for a vessel

This section sets out requirements for a ballast water management plan for a vessel, for the purposes of paragraph 286(b) of the Act. Section 286 sets out requirements for a ballast water management plan, including any requirements prescribed by this Determination (paragraph 286(b) of the Act).

Section 26 of this Determination provides that for the purposes of paragraph 286(b) of the Act, a document that is intended to be a ballast water management plan for a vessel must include mandatory provisions in accordance with the IMO guidelines for ballast water management and development of ballast water management plans. The document must also be in the form set out in the Appendix to the IMO guidelines.

The purpose of the section is to prescribe what information is required in a ballast water management plan for a vessel. Where ballast water has been discharged in Australian seas, biosecurity officials are required to assess whether a contravention of section 270 of the Act has occurred. In doing so, biosecurity officials will need to assess whether the exception in section 270 of the Act applies, including whether the vessel has a ballast water management plan in force. The discharge of ballast water is permitted where it has been managed in accordance with Chapter 5, Part 3, Division 3 of the Act.

Section 27 – Scheme for approval of ballast water management plan for a vessel

This section provides a scheme for approval of ballast water management plans for vessels, setting out requirements for the Director of Biosecurity or a survey authority to approve, amend or cancel the approval of a vessel's ballast water management plan.

Subsection 27(1) provides that for the purposes of section 287 of the Act, the Director of Biosecurity or a survey authority may:

- approve a ballast water management plan for the vessel
- approve an amendment of the vessel's ballast water management plan, or
- cancel the approval of the vessel's ballast water management plan.

Subsection 27(2) provides that the Director of Biosecurity or a survey authority may approve a ballast water management plan for a vessel if the plan includes mandatory provisions in

accordance with the IMO guidelines for ballast water management and the development of ballast water management plans. The plan must also be in the form set out in the Appendix to the IMO guidelines. Where the Director of Biosecurity is approving the plan, the plan also must have been endorsed by a survey authority.

Subsection 27(3) provides that the Director of Biosecurity or a survey authority may approve an amendment of a ballast water management plan for a vessel if they are satisfied that the plan, as amended, will meet the requirements in subsection 27(2).

Subsection 27(4) provides that the Director of Biosecurity or a survey authority may cancel the approval of a ballast water management plan for a vessel if the plan no longer meets the requirements prescribed in subsection 27(2).

A decision made under section 27(4) to refuse to approve a ballast water management plan or an amendment to a ballast water management plan, or to cancel the approval of a ballast water management plan, is a reviewable decision under Part 1 of Chapter 11 of the Act. In particular, items 14 and 15 in the table under section 574 of the Act provides that a decision to refuse to approve, amend or cancel a plan is a reviewable decision, and that a relevant person is a person whose interests are affected by the decision.

Section 576 of the Act provides that a relevant person for a reviewable decision may apply for internal review of the decision (not made by the Director of Biosecurity personally) in the first instance. Section 578 of the Act provides that a relevant person also may apply to the Administrative Appeals Tribunal for review of the decision made by the internal reviewer under section 576, or review of a decision made by the Director personally.

Division 3 – Ballast water management certificates

Section 28 – Ballast water management certificate for a vessel

This section prescribes the requirements for a document that is intended to be a ballast water management certificate for a vessel whether or not the vessel's Administration is a party to the Ballast Water Convention.

Subsection 28(1) provides that for the purposes of paragraph 288(c) of the Act, this section prescribes the requirements for a document that is intended to be a ballast water management certificate for a vessel. Section 288 sets out requirements for a ballast water management certificate, including any requirements prescribed by this Determination (paragraph 288(c) of the Act).

Subsection 28(2) provides that for Australian vessels and for foreign vessels whose Administration, or country, is a party to the Ballast Water Convention, the document must be in the form set out in Appendix I to the Ballast Water Convention.

Subsection 28(3) provides that if the vessel's Administration is not a party to the Ballast Water Convention, the document must be a survey report from a survey authority of the vessel's Administration. This must include the information set out in Appendix I to the Ballast Water Convention, and records of surveys referred to in regulation E-1 of the Ballast Water Convention that have been carried out in relation to the vessel.

By prescribing these requirements, biosecurity officers are able to access sources containing the necessary information to determine compliance with the Act and assess biosecurity risks associated with discharges of ballast water from the vessel. These requirements also mean that Australia meets its international obligations under the Ballast Water Convention.

Section 29 – Scheme for survey of vessel and issue etc. of ballast water management certificate

This section provides a scheme for the survey of both Australian and foreign vessels and the issuing of ballast water management certificates.

Subsection 29(1) provides that for the purposes of subsection 290(1) of the Act, the Director of Biosecurity or a survey authority may do one or more of the following:

- survey the vessel to determine whether a ballast water management certificate should be issued or endorsed for the vessel
- issue a ballast water management certificate for the vessel
- endorse a ballast water management certificate for the vessel
- withdraw a ballast water management certificate for the vessel
- extend the period during which a ballast water management certificate for the vessel is in force
- amend the expiry date on a ballast water management certificate for the vessel.

Subsection 29(2) provides that the Director of Biosecurity or survey authority must carry out the appropriate survey of a vessel, as referred to in regulation E-1 of the Ballast Water Convention, before:

- issuing, endorsing or withdrawing a ballast water management certificate for the vessel
- extending the period during which a ballast water management certificate is in force for the vessel, or
- amending the expiry date on a ballast water management certificate for the vessel.

Subsection 29(3) provides that if, after carrying out a survey of a vessel under subsection 29(2), the Director of Biosecurity or the survey authority is satisfied that the applicable requirements in regulation E-1 of the Ballast Water Convention are met in relation to the vessel, the Director or the survey authority must, as required:

- issue or endorse a ballast water management certificate for the vessel
- extend the period during which a ballast water management certificate is in force for the vessel, or
- amend the expiry date on a ballast water management certificate for the vessel.

Subsection 29(4) provides that if the Director of Biosecurity or survey authority are satisfied that the requirements for the Ballast Water Convention are no longer being met after reviewing a ballast water management certificate, they must withdraw the certificate.

A decision to refuse to issue, endorse or amend a ballast water management certificate, a decision to refuse to extend the period during which such a certificate is in force or a decision to withdraw such a certificate is a reviewable decision under section 574 of the Act (items 16 and 17 in the table under that section). Section 574 also provides that the relevant person is a person whose interests are affected by the decision.

Section 576 of the Act provides that a relevant person for a reviewable decision may apply for internal review of the decision (not made by the Director of Biosecurity personally) in the first instance. Section 578 of the Act provides that a relevant person also may apply to the Administrative Appeals Tribunal for review of the decision made by the internal reviewer under section 576, or review of a decision made by the Director personally.

Subsection 29(5) provides that a ballast water management certificate must be in the form set out in Appendix I to the Ballast Water Convention.

The purpose of section 29 is to provide the process for surveying vessels and the processes for issuing, endorsing, withdrawing and amending ballast water management certificates.

This allows for the Director of Biosecurity to regulate ballast water management certificates to ensure vessels are maintaining the survey schedule as set out in the Ballast Water Convention and in doing so, ensure the vessel's ballast water equipment and processes are effectively maintained.

Part 5 – Ballast water records

Section 30 – Requirements for ballast water records system for a vessel

This section provides that for subsections 292(1) and 292(1A) of the Act, the requirements for a ballast water record system carried on board a vessel are as specified in regulation B-2 of the Ballast Water Convention.

The purpose of this section is to ensure records relating to the ballast water system on a vessel are easily verifiable and consistent with international standards.

Section 31 – Requirements for records of ballast water operations and disposals of sediment

This section provides the requirements for records of ballast water operations and disposals of sediment. This section applies to all Australian vessels, whether within or outside of Australian seas, and to foreign vessels.

Subsection 31(1) provides that this section is made for paragraphs 293(2)(c) of the Act. That paragraph provides that a record for a ballast water operation or the disposal of sediment must comply with requirements prescribed by this Determination.

Subsection 31(2) provides that the requirements for records of ballast water operations conducted by an Australian vessel or a foreign vessel are as follows:

- the record must comply with regulation B-2 of the Ballast Water Convention.
- if the discharge is covered by an exemption under section 278A or section 279 of the Act, the ballast water records must describe the circumstances and the reasons for any discharge that occurs in relation to the exemption.

Subsection 31(3) provides requirements for a record of disposal of sediment. It must include the following information, namely:

- the date and time of the disposal, the location of the vessel and when the disposal occurred;
- identifying information about the tanks from which the sediment was disposed;
- estimated volume (in cubic centimetres) of sediment disposed of; and
- any residual sediment remaining in the tanks at the end of the disposal.

The record must be made in, or translated into English, French or Spanish, signed by the person in charge of the disposal, and each completed page of the report must be signed by the person in charge of the vessel. This may also occur in an electronic format.

If the records of a vessel comply with subsection 295(1) of the Act and this section, the vessel has appropriate ballast water records. Subsection 295(1) of the Act provides the requirements for appropriate ballast water records, including that the vessel has on board records made in accordance with section 293.

The purpose of this section is to prescribe the requirements for records of ballast water operations and sediment disposal. Both Australian and foreign vessels are required to record and retain information about the ballast water operations on the vessel and the disposal of

sediment which allows the Director of Biosecurity to assess whether the biosecurity risk of the ballast water disposal has been adequately managed.

Part 6 – Decisions

Section 32 – Decisions

Subsection 32(1) provides that this section applies if the Director of Biosecurity makes a decision under subsections 12(3), 15(2) or 25(3) (the relevant provisions).

Subsection 32(2) provides that in response to an application made under the relevant provisions, the Director of Biosecurity must make the decision and give written notice within 28 days of the application being lodged. Should this not occur, the application is taken to be refused.

Subsection 32(3) provides that if the Director of Biosecurity does not give a written notice within the 28 day period, the Director is taken to have refused the application at the end of that period.

Subsection 32(4) provides that the Director of Biosecurity may, by written notice, require further information from the applicant.

Subsection 32(5) provides if a notice is given under subsection 23(4), the 28 day period referred to in subsection 32(2) stops on the day the notice is given and resumes on the day after the requested information is provided to the Director of Biosecurity.

Schedule 1 – Repeals

Schedule 1 repeals the entirety of two instruments:

- *Biosecurity (Acceptable Ballast Water Exchange Area) Determination 2016*
- *Biosecurity (Methods of Ballast Water Management) Approval 2016*

These instruments are repealed as their content has been incorporated and consolidated into this Determination.

Item 1

Item 1 of Schedule 1 provides that the whole of the *Biosecurity (Acceptable Ballast Water Exchange Area) Determination 2016* is repealed.

Item 2

Item 2 of Schedule 1 provides that the whole of the *Biosecurity (Methods of Ballast Water Management) Approval 2016* is repealed.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Biosecurity (Ballast Water and Sediment) Determination 2017

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

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.

Section 308A of the Act provides that the Director of Biosecurity may, by legislative instrument, make a determination prescribing matters that are required or permitted, or necessary or convenient, for carrying out or giving effect to Chapter 6 of the Act.

The *Biosecurity (Ballast Water and Sediment) Determination 2017* (the Determination) forms part of the modern regulatory framework for the Australian Government to manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy. In particular, the Determination facilitates the essential flexibility necessary to administer the complex ballast water regulatory framework of the International Convention for the Control and Management of Ships' Ballast Water and Sediments.

Human rights implications

This Determination engages the following rights:

- Article 17 of the International Covenant on Civil and Political Rights (ICCPR) – Right to protection from arbitrary interference with privacy

Right to protection from arbitrary interference with privacy

Article 17 of the ICCPR protects the right to be free from arbitrary or unlawful interference with an individual's privacy, family, home or correspondence. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to this purpose.

To protect an individual's privacy, the Determination only requests information that is reasonable, necessary and proportionate to achieve the legitimate policy objective of managing biosecurity risk. Section 6 of the Determination may operate to limit this right relating to the collection of personal information. This provision requires that the contact details of a person who is responsible for managing the ballast water on board a vessel to be provided in a ballast water discharge report. The collection of this information is necessary to ensure that the Australian Government has the correct contact details of a person in charge of

ballast water management for a vessel. This allows biosecurity officers to inform the necessary person of any concerns with the report and manage any biosecurity risk that may arise.

Conclusion

The Determination is compatible with human rights, because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Daryl Quinlivan
Director of Biosecurity