

EXPLANATORY STATEMENT

Issued by the Deputy Prime Minister and the Minister for Agriculture and Water Resources in compliance with section 15J of the *Legislation Act 2003*.

Biosecurity Act 2015

Biosecurity Amendment (Ballast Water and Other Measures) Regulations 2017

Legislative Authority

The *Biosecurity Act 2015* (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 645 of the Biosecurity Act provides that the Governor-General may make regulations regarding matters required or permitted to be prescribed by the Biosecurity Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Biosecurity Act.

Section 53 of the Biosecurity Act provides that regulations may prescribe measures to be taken by operators of incoming or outgoing aircraft or vessels to destroy certain disease agents.

Purpose

The purpose of the *Biosecurity Amendment (Ballast Water and Other Measures) Regulations 2017* (the Regulations) is to amend the *Biosecurity Regulation 2016* (Biosecurity Regulation) and *Biosecurity (Human Health) Regulation 2016* (Human Health Regulation) in line with recent changes to the Biosecurity Act, as a result of the *Biosecurity Amendment (Ballast Water and Other Measures) Act 2017* (the Biosecurity Amendment Act).

The Regulations repeal Chapter 4 of the Biosecurity Regulation which deals with ballast water and sediment. These provisions are being moved to a single legislative instrument to provide for more effective management of ballast water legislation.

The Regulations also amend the Human Health Regulation to strengthen the biosecurity system by enabling better targeting of vectors capable of carrying human diseases, such as mosquitos.

Background

The Biosecurity Amendment Act amends the Biosecurity Act in order to strengthen Australia's biosecurity system by better protecting both our marine ecosystems and human health. This includes ensuring Australia is in a position to ratify the *International Convention for the Control and Management of Ships' Ballast Water* (Ballast Water Convention). To simplify the regulatory framework and clarify Australia's requirements, all detailed regulatory provisions regarding Australian ballast water management are being moved into a single legislative instrument.

The amendments to the Biosecurity Regulation repeal Chapter 4, which relates to the management of ballast water and sediment, along with references to ballast water in the Biosecurity Regulation. This includes a definition in Section 5 of the Biosecurity Regulation.

The Biosecurity Amendment Act also expands an existing vector destruction requirement to apply that requirement to all human diseases, not only listed human diseases. The amendments relating to human health require subsequent amendments to the Human Health Regulation to reflect this expansion.

Impact and Effect

The Regulations will allow the movement of the detailed regulatory provisions on ballast water and sediment management into a single legislative instrument. This will facilitate the essential flexibility necessary to administer the complex framework. The development of a single legislative instrument will ensure clarity for stakeholders and industry as ballast water provisions will not be split over multiple pieces of legislation. In addition, the single legislative instrument will enable Australia to keep up to date with changes to the Ballast Water Convention without needing to amend the Biosecurity Act each time the Ballast Water Convention is updated.

The Regulations also align the Human Health Regulation with the amendments made by the Biosecurity Amendment Act. In this regard, it expands control powers to cover all human diseases, and enable better targeting of vectors capable of carrying human diseases, such as mosquitos.

Consultation

In the lead up to the Biosecurity 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. All proposed amendments to the Biosecurity Regulation were covered in discussions regarding the Biosecurity Act amendments.

This 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, over proposed measures to comply with the Ballast Water Convention.

The Department of Health has worked with state and territory counterparts and communicable disease experts to ensure the amendments address contemporary public health concerns posed by vectors including exotic mosquitoes.

Regulatory impact analysis

Before the Regulations were 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 Regulations are set out in [Attachment A](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Sections 1 to 4 and Schedule 2 of the Regulations commence the day after it is registered on the Federal Register of Legislation.

Schedule 1 to the Regulations commence on the later of the start of the day after it is registered or on the commencement of Schedule 1 to the Biosecurity Amendment Act.

Statement of compatibility with human rights obligations

The Regulations are compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This Legislative Instrument does not raise any human rights issues.

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

Matter incorporated by reference

These Regulations do not apply, adopt or incorporate other matter by reference.

Details of the *Biosecurity Amendment (Ballast Water and Other Measures) Regulations 2017*

Section 1 – Name

Section 1 provides that the name of these regulations is the *Biosecurity Amendment (Ballast Water and Other Measures) Regulations 2017* (the Regulations).

Section 2 – Commencement

Section 2 provides that sections 1 to 4 of the Regulations commence the day after they are registered on the Federal Register of Legislation.

It also provides that Schedule 1 to the Regulations commences on the later of the start of the day after it is registered or on the commencement of Schedule 1 to the *Biosecurity Amendment (Ballast Water and Other Measures) Act 2017* (Biosecurity Amendment Act). However, Schedule 1 to the Regulations does not commence at all if Schedule 1 to the Biosecurity Amendment Act (amendments relating to the Ballast Water Convention) does not commence.

Schedule 2 to the Regulations commences on the day after it is registered.

Section 3 – Authority

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

Section 4 – Schedules

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

Schedule 1 – Amendment of the Biosecurity Regulation 2016

Item 1

Item 1 repeals the definition of a “ballast water discharge report” as item 2 repeals Chapter 4 of the *Biosecurity Regulation 2016* (Biosecurity Regulation) and removes the terminology.

Item 2

Item 2 repeals the entirety of Chapter 4 of the Biosecurity Regulation, which deals with ballast water and sediment. Content relating to ballast water and sediment will now be located in a single legislative instrument.

Schedule 2 – Amendment of the Biosecurity (Human Health) Regulation 2016

Item 1

Item 1 amends subsection 7(1) of the *Biosecurity (Human Health) Regulation 2016* to substitute “section 53” with “section 204A”. This amendment is consequential to items 6 and 7 of Schedule 2 to the Biosecurity Amendment Act. Those items repealed section 53 of the Biosecurity Act and replaced it with new section 204A. This item amends the reference to section 53 of the Biosecurity Act in subsection 7(1) of the Human Health Regulation to section 204A.

Item 2

Item 2 inserts the words “any other human disease” after “listed human disease” in subsection 7(1)(a) of the Human Health Regulation. This is to provide that the operator of an incoming aircraft must take disinsection measures to control or destroy vectors of human disease that have the potential to cause a listed human disease, or any other human disease.

Statement of Compatibility with Human Rights

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

Biosecurity Amendment (Ballast Water and Other Measures) Regulations 2017

The *Biosecurity Amendment (Ballast Water and Other Measures) Regulations 2017* (the Regulations) are 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 Regulations

The Regulations amend the *Biosecurity Regulation 2016* (Biosecurity Regulation) in line with recent changes to the *Biosecurity Act 2015* (Biosecurity Act) made by the *Biosecurity Amendment (Ballast Water and Other Measures) Act 2017* (the Biosecurity Amendment Act).

The Regulations repeal Chapter 4 of the Biosecurity Regulation to move the provisions to a single legislative instrument to provide for more effective management of ballast water legislation.

The Regulations also amend the *Biosecurity (Human Health) Regulation 2016* to strengthen the biosecurity system by enabling better targeting of vectors capable of carrying human diseases, such as mosquitos. It also updates cross references to align with amendments to the Biosecurity Act made by the Biosecurity Amendment Act.

Human rights implications

Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) protects the right of all individuals to enjoy the highest attainable standards of physical and mental health. This includes the application of measures for the prevention, treatment, and control of epidemic, endemic, occupational and other diseases (Article 12(2)).

The Regulations engage strongly with this right. In particular, the Regulations advance the protection of public health by ensuring the Commonwealth has the power to control vectors that are capable of spreading serious communicable diseases.

The Regulations (Schedule 2, Item 1 and 2) also provides requirements for incoming aircraft and vessels for the destruction of vectors, such as mosquitoes, that may carry diseases of human health concern.

The Regulations seek to further implement Australia's obligations as a signatory to the *International Health Regulations (2005)* (IHR). The purpose of the IHR is to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with, and restricted to, public health. Consistent with the requirements of the IHR, the Regulation proposes powers to restrict and prevent the spread of vectors capable of carrying communicable diseases.

Conclusion

The Regulations are compatible with human rights as it does not raise any human rights issues and promotes the right to health.

The Hon. Barnaby Joyce MP

Deputy Prime Minister and Minister for Agriculture and Water Resources