

19 December 2012

Mr Stephen Palethorpe
Committee Secretary
Senate Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Palethorpe,

RE: Inquiry into Biosecurity Bill 2012

Ports Australia welcomes the release and opportunity to comment on the draft Biosecurity Bill 2012.

Ports Australia - Representation

Ports Australia is the peak industry body representing all port authorities and corporations, both publicly and privately owned, at the national level. Ports Australia is a constituted company limited by guarantee with a Board of Directors, comprising the CEOs of ten member ports. Our website is at www.portsaustralia.com.au

Strategic Policy Interest

We have had the opportunity to examine all sections of the Bill; indeed, Ports Australia was invited by DAFF to be a member of the Industry Legislation Working Group. This group met on a number of occasions in Canberra and members were provided with confidential copies of the draft legislation. DAFF facilitated excellent consultation with industry and members of the Working Group brought extensive experience of the Quarantine Act to the table. Our input on relevant parts of the draft legislation received a good hearing and, in many cases, amendments were implemented as a result of reasoned arguments.

We note that the drafters have opted for a very high level framework. This will enable the regulator to manage a constantly changing environment. The detail and the certainty upon which industry will rely will be found in the Regulations. We await the release of the Regulations with considerable interest.

The key areas of change that will have the greatest impact on ports are:

- Introduction of a policy for the approval of first points (ports) of entry;
- The creation of biosecurity zones; and
- The establishment of a single national system for ballast water management.

First Points of Entry - Chapter 4 of the Bill covers conveyances (eg vessels or offshore oil and gas installations and any interactions with these conveyances) entering Australia's jurisdiction. Vessels and aircraft that are subject to biosecurity control can only travel to a first point of entry, however, the current Quarantine Act has no provision for establishing a first point of entry. This was a matter of some concern to ports who wanted to become first points of entry and we are accordingly pleased that the new Bill will establish a clear process for securing and maintaining this status.

The Director of Biosecurity will have the power to determine, suspend or revoke a first point of entry. Prior to establishing a first point of entry, the Director must be satisfied that the level of biosecurity risk associated with operations of the port is acceptable and the requirements set out in the Regulations will be met. A first point of entry can be determined subject to conditions eg, it may only receive timber, or it can receive people, goods and vessels.

The Regulations will set out the broad requirements that a port must meet. They will include setting out the port's boundaries, measures to monitor biosecurity risks, measures to manage biosecurity waste, having procedures to report biosecurity incidents, and providing facilities from which biosecurity officers can operate.

All current first points of entry will immediately become first points of entry under the new legislation. There will be a 3 year transition period for this new regime after which time all first points of entry will undergo an assessment to ensure that the port is meeting the requirements of the Regulations.

Ports Australia has, in a number of contexts, made representations to government about the increasing cost of regulation, and the increasing disposition of governments to shift the costs of regulation to industry. This is no trivial point because of the increasing impact this has on the competitiveness of our trading sector.

Accordingly we strongly urge that DAFF utilise its best endeavours to minimise additional application costs and other costs such as those attached to becoming or changing the terms for being a first point of entry which may also involve associated infrastructure costs or other costs for the upgrade of facilities. In this regard also we strongly support an outcomes based regulatory regime and not a prescriptive approach which also brings with it unnecessary costs and which often drives solutions that are not suited to the business of operating ports.

Biosecurity Zones – Chapter 6 of the Bill gives the Commonwealth new powers to monitor and, where necessary, manage biosecurity risks when they emerge onshore, not just when they arrive at Australia from overseas.

The Director of Biosecurity will have the power to declare a biosecurity zone (as well as sub-zones within a zone) and to apply onshore biosecurity measures within that zone. The exercise of powers or application of measures in a biosecurity zone will be subject to a number of protections, including that the measures are likely to be effective in preventing, reducing or controlling the risk and are proportionate to the level of risk. If these protections are not satisfied, a zone cannot be declared.

We are advised by DAFF that there will be minor impact from the zones given that there are already existing areas around ports to manage biosecurity. Ports are also familiar with the concept of zones as there are various kinds of zones within ports for the purposes of enforcing maritime security provisions under the Maritime Transport and Offshore Facilities Security Act 2003.

Ballast Water – Chapter 5 of the Bill regulates the use of ballast water by Australian vessels and foreign vessels in Australian seas. Ports Australia has worked closely with the Department over a number of years on the implementation of ballast water provisions that will apply to all vessels in Australian waters.

Thank you for the opportunity to comment on the draft Bill. Ports Australia would be pleased to expand on any of the points raised in our response.

Yours sincerely

David Anderson
Chief Executive Officer