

BIOSECURITY REGULATIONS 2016 – FIRST POINTS OF ENTRY STANDARDS

PORTS AUSTRALIA SUBMISSION

Ports Australia welcomes the opportunity to comment on the updated draft of the *First Point of Entry Biosecurity Standards (ports): Guide to meeting Section 58 of the Biosecurity Regulation 2016*.

Ports Australia would like to thank the Department of Agriculture and Water Resources (DAWR) for engaging with Ports Australia and its Members at our forums and on a bilateral basis with our individual Members over the last 12 months. Since the development of the Biosecurity regulations our focus has been on the draft First Points of Entry Standards and we have provided feedback formally and informally on the Standards, including most recently at a Ports Australia meeting on 24 February. We have further elaborated on these matters below.

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 11 member ports. Our website is at www.portsaustralia.com.au

Ports Australia consulted closely with all its Members in developing its views on the draft First Points of Entry Standards.

Summary Position

Ports Australia and its Members are supportive of a robust national biosecurity system that protects Australia's commercial sector and the broader community. Ports have always engaged in activities that facilitate this goal including through compliance with government direction on biosecurity measures. We consider an opportunity exists for the Commonwealth Government to implement biosecurity measures through the First Points of Entry Standards that are equitable and rational.

Speaking recently with officials from DAWR it has been made clear to Ports Australia and its Members that the Standards are in effect guidelines, as indicated in the 'Purpose' section of the document, and that there is considerable flexibility in applying the Standards commensurate with the port environment and its operations. We are also advised that this flexibility is supported by assessment tools that DAWR will utilise at the different ports in working towards a biosecurity solution for the port.

We are supportive of this flexible approach that considers the environment of the port, its operations, capacity and capability. We look for transparency on this approach, including through sharing the final assessment tools with the ports so that we are able to better understand the assessment and plan for the flexible suite of actions that will enable ports to comply with the First Points of Entry Standards.

This flexibility is essential for implementing actions that reduce the impact of rising costs to the ports industry from increasing government regulation, which has consequential costs to our trades and impacts on our competitiveness. The ports industry is regulated, at the Commonwealth level, by the Office of Transport Security, the Australian Border Force and the DAWR. At this stage there is very little synergy between the implementation approaches across these agencies resulting in increased costs borne by the ports in complying with their individual regulatory requirements.

The draft First Points of Entry Standards outline requirements leading to various costs for ports, e.g. the provision of wash-down and office facilities for biosecurity waste, and written evidence of biosecurity incident preparedness. DAWR should make use of existing port facilities and integrate its other requirements with existing port actions that aim to comply with Commonwealth and state government regulations. Failure to do so will see ports being burdened by increased regulatory costs and needing to allocate resources that would otherwise be dedicated to improving trade and business. Our proposed approach is also consistent with the Government's policies on deregulation, reducing red tape and improving the economy.

We have taken the comments made to us by DAWR officials, which are partly expressed above, on the scope of flexibility with the Standards on face value and are broadly comfortable with this approach. However, we remain cautious while DAWR implements its approach given that a change in personnel within the bureaucracy could lead to a different interpretation of the Standards.

Accordingly, we continue to seek further documented evidence of the proposed flexibility in implementing the Standards. We support the circulation of assessment tools to the ports that will provide further guidance on the flexibility. We also propose DAWR seek the ports' input on existing actions they undertake in meeting Commonwealth and state regulations which can be leveraged to fulfil requirements in Table 1-10. These existing actions can be included in the tables as examples for meeting the requirements, and help emphasise the flexibility of the Standards. In addition, DAWR may also wish to provide other examples for each of the 'evidence' requirements in Tables 1-10 to assist with interpretation of responsibilities that is to be met by port entities.

Specific Issues

1. Standards vs Guidelines

The First Point of Entry Standards is considered by the ports industry as an authoritative model or rule due to the use of the word 'Standard' in the title. General nomenclature use of the word 'Standard' is associated with documents published by Standards Australia or the International Organisation for Standards (ISO documents) which have no flexibility in their approach and are not generally guides.

Upon further reading of the First Point of Entry Standards and in discussions with DAWR officials it has become clear that the Standards are guidelines and accordingly we suggest the title be changed to reflect the intention of the document. We consider this will provide further comfort to industry in engaging on the approach outlined in the document, while also providing clarity on the intent of the document to government officials 'on-the-ground'. We also consider this change will reduce uncertainty for future users of the document who have not been privy to engagement with DAWR officials or the overall consultation process.

2. Governing Principles – section 5

We agree with the concept of the first principle that the application of the First Point of Entry Standards be risk based, however we consider that the principle be expanded from being based on the capacity to effectively reduce risk to also include consideration of the likelihood of the risk at the port environment. Actions taken by the port should be commensurate with the risk posed at the port.

While notionally the fifth principle makes logical sense, in reality it is not simple to identify an entity that should manage the biosecurity risk because they are the one generating benefit from the operation. Benefits are gained across the entire supply chain in the business of trade. For example, shipping lines,

shipping agents, port operators, port authorities, distributors, etc are all commercial entities gaining from the business of trade.

We would also argue that ports do not generate benefit from operations that create the biosecurity risk. Ports are simply gateways. The risk is already present, either from the arriving ship or from the domestic supplier wishing to export their goods.

None of the viewpoints stated in the above two paragraphs should take away from the fact that ports are supportive in being part of the solution in managing biosecurity threats to our nation. We are happy to cooperate and be proactive in suggesting solutions. However, we cannot condone the general view by regulators that ports are risk creators and therefore should be responsible for fixing the problem. This simply constitutes a rationale to shift costs to the most visible target.

We also propose the inclusion of an additional principle on Operational Control. The term is well entrenched in some state legislation (e.g. *National Greenhouse and Energy Reporting Act 2007*), and speaks to the principle of the person/entity who has authority to introduce and implement change being the one responsible for it. This could assist in providing further clarity of responsibilities for those providing the “evidence” requirements in Tables 1 to 10.

3. Responsibilities of Port Authority vs Port Operator

Ports around Australia have different ownership structures. Some are government owned, while others are privately leased or privately owned. The management of ports can also vary due to these ownership arrangements, the size of the port or its commercial environment. At one end of the spectrum ports can be fully operated by the port authority, while at the other end the port authority is simply a lessor of land to various operators who undertake activities on port land.

Given this diverse structure at port, the simple summarisation of responsibilities listed against each entity in the table in section 6, is incorrect. For example, Fremantle Ports (government owned), does not have responsibilities for: incident response preparedness; managing general areas of the port environment; and ensuring office space and amenities are available to support department staff in performing their duties where required. These are the responsibilities of Port Operators under the contractual agreements in place at the Port of Fremantle.

Amending this understanding of the port authority and the port operator responsibilities is also essential to ensure ‘evidence’ required to meet the Standards in section 8 is provided by the correct entity, and is within their capability. In our recent meeting with DAWR officials we understand that there is recognition by the regulator on the complexity of port structures and operational arrangements, and these amendments would be made accordingly.

4. Increasing Costs to Industry

As expressed in the summary section, the ports industry is regulated, at the Commonwealth level, by three government bodies. There is very little synergy between their implementation approaches resulting in increased costs borne by the ports in complying with their individual regulatory requirements. This in turn results in consequential costs to our trades and impacts on our global competitiveness.

Given ports pay taxes and cost recovery arrangements imposed by governments it begs the question why are ports paying for services or providing for facilities which are the responsibility of the regulators.

Due to shrinking government budgets there is an increased disposition by regulators to shift the cost of a public good and the associated regulatory functions to industry players such as ports.

The First Point Standards are another regulatory tool which will lead to further costs to the ports. While some of our larger ports may have some existing resources (space, facilities, staff, etc.) to help meet the requirements of the Standards, our smaller ports will not be able to do so without seeing major impacts to their tight financial margins. It remains uncertain whether smaller ports will incur proportionally less costs than other larger ports, or if they will be required to contribute costs of a similar scale.

Interpreting the evidence requirements in the Standards suggests various costs, including:

- provision of handstand areas for containment of goods subject to biosecurity;
- provision of wash-down facilities for biosecurity waste if no approved facility is nearby;
- provision of office facilities for biosecurity staff;
- comprehensive feral animal control program (pigeons, cats, rodents, ants);
- documentation and evidence of compliance to the Standards e.g. feral animal control program;
- creation and maintenance of biosecurity procedures and plans;
- awareness raising, education and promotion of biosecurity issues and risks through port inductions and to all port staff, stevedores and contractors; and
- first responder's management of public health emergencies.

In addition to costs, we are concerned that the provision of these facilities will take up valuable space in ports that are often already limited. Ports are generally restricted in the land space they can utilise due to the growth in surrounding communities and general urban encroachment. Like any other business ports aim to grow their business and must do so within the constrained space that they are afforded. By providing facility space to meet regulatory requirements the potential to utilise this space for the development and facilitation of trade is lost.

The flexibility espoused in the implementation of the First Point Standards will be key to addressing the issues outlined above. Ports are happy to work with the regulator to address threats to Australia's biosecurity, but we look to the regulator to have a common-sense approach in its implementation while recognising the commercial context that ports operates in.

Finally, I would like to express my gratitude to the Department in the manner in which it has conducted itself during this consultation process. We look forward to continuing our engagement in finding practical port solutions to the biosecurity issues facing Australia.

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