

AUSTRALIAN GOVERNMENT

Biosecurity Legislation Regulation Impact Statement

Department of Agriculture

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Glossary

ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
AQIS	Australian Quarantine and Inspection Service
Ballast Water Management RIS	A Regulation Impact Statement approved by the OBPR in May 2007
Business	In this Regulation Impact Statement, 'business' includes any private organisation that aims to make a profit (including sole traders), the commercial activities or transactions of not-for-profit organisations, and any government business enterprise
CIE	Centre for International Economics
Commonwealth, the	The Commonwealth of Australia
Compliance cost	A cost incurred by a business, individual or non-government organisation in order to comply with new regulations
Convention, the	International Convention for the Control and Management of Ships' Ballast Water and Sediments
department, the	Australian Government Department of Agriculture
FPoE	First Point of Entry
GDP	Gross Domestic Product
IGB	Inspector-General of Biosecurity

Glossary

IMO	International Maritime Organization
NIMPCG	National Introduced Marine Pests Coordination Group
OBPR	The Office of Best Practice Regulation
Proposed biosecurity legislation	Refers to the draft Biosecurity Bill and the Inspector-General of Biosecurity Bill
PwC	PricewaterhouseCoopers
RIS	Regulation Impact Statement
QAP	Quarantine Approved Premises
Quarantine Act	<i>The Quarantine Act 1908</i>

Executive summary

Australia's biosecurity system protects our unique environment and agricultural sector and supports our reputation as a safe and reliable trading nation. Biosecurity involves managing risks where there is a likelihood of a disease or pest entering Australia and establishing itself or spreading and potentially causing harm to human, animal, or plant health, the environment; or causing economic consequences. This has significant economic, environmental and community benefits for all Australians.

The *Quarantine Act 1908* ('the Quarantine Act') provides the legislative basis for human, plant and animal quarantine activities in Australia and provides a national approach to protecting Australia from pests and diseases.

Since the Quarantine Act was first drafted over a century ago, Australia's biosecurity risks have changed significantly. Shifting global demands, growing passenger and trade volumes, increasing imports from a growing number of countries, population expansion and changing pests and diseases all contribute to the need for better regulation.

Australia's biosecurity system focuses on targeting what matters most with resources focused on stopping the pests and diseases that can cause the most harm from entering Australia. This approach targets risk where it is most effective to do so and reduces the burden on clients who comply with biosecurity rules for example allowing for faster clearance of their goods.

In this context, new legislation has been developed that aims to manage biosecurity risks more flexibly than the current legislation, whilst still ensuring a robust set of powers and mechanisms to protect Australia's unique biosecurity status and environment. The Biosecurity Bill and the Inspector-General of Biosecurity Bill, have been drafted to replace the Quarantine Act and associated legislative instruments.

The proposed biosecurity legislation is designed to reduce unnecessary red tape and provide a more flexible risk based approach to compliance which will assist with reducing costs and regulatory burden for clients and the department. By reducing unnecessary regulatory and administration burden, it is expected that biosecurity resources will be better focused on biosecurity risks that may cause the most harm and therefore the effectiveness of biosecurity risk management. It will reduce administrative burden, provide regulatory certainty in administering the legislation and allow for modern and efficient service delivery. This Regulatory Impact Statement (RIS) is focussed only on those parts of the proposed legislation that could be expected to generate substantive costs or benefits for businesses, individuals and the wider community, relative to the current situation.

It has been illustrated in this RIS that whilst the overall compliance costs on businesses results in a reduction of more than \$6.9 million, the compliance cost burden on some industry participants is estimated to increase. This is primarily through the increased regulation to manage the biosecurity risk associated with ballast water by domestic vessel movements.

This RIS builds on the analysis contained in the Ballast Water Management RIS undertaken in 2007 and the Biosecurity Legislation RIS undertaken in 2012.

This RIS concludes that the best course of action is adopting the proposed biosecurity legislation to replace the existing regulatory framework.

Scope of this RIS

A RIS for the adoption of the proposed biosecurity legislation was approved by the Office of Best Practice Regulation (OBPR) in November 2012.¹ Prior to this, a RIS on ballast water management, a specific area of the proposed biosecurity legislation, was prepared separately and approved by OBPR in May 2007.² This RIS has been developed to address new government requirements and draw together information from the previous RIS' in a single document.

This RIS is based on the significant, and still relevant, consultation that occurred for the Ballast Water Management RIS in 2007, the biosecurity legislation development from 2009 to 2012 and the biosecurity legislation RIS in 2012. Specific stakeholder comments regarding the costs and benefits of adopting the proposed biosecurity legislation are incorporated into the document.

This RIS does not evaluate the need for government quarantine activities at Australia's border. This issue was addressed in two reviews, the *Australian Quarantine: A shared responsibility* (the Nairn review) in 1995 and *One biosecurity: a working partnership* (the Beale review) in 2008, which illustrate the nature of biosecurity risks to Australia, the potentially severe consequences should an incursion occur, and the need for government intervention.

This RIS focuses on the following parts of the proposed biosecurity legislation that will increase or mitigate regulatory burden.

- Approved arrangements
 - The Quarantine Act allows industry participants and the Commonwealth to enter into a compliance agreement (s66B), authorising the industry participant to apply particular procedures to goods (i.e. treatments).
 - The Quarantine Act then requires that each place where goods will be treated or dealt with is approved as a quarantine approved premise (QAP)(s46A).
- Ballast water management
 - In May 2005, Australia signed the International Convention for the Control and Management of Ships' Ballast Water and Sediments (the Convention), subject to ratification.
 - Implementing the Convention requires Australia to adopt a different system of ballast water management, where Australian vessels and foreign vessels in

¹ [The 2012 RIS is available online](#)

² CIE (2007) Ballast water management, A regulation impact statement, prepared for Department of Agriculture, Forestry and Fisheries by the Centre for International Economics Canberra & Sydney.

Australian seas are required to have a ballast water management plan, a ballast water management certificate and to keep ballast water records.

- Inspector-General of Biosecurity
 - The Inspector-General of Biosecurity is a statutory body responsible for the independent review of Australia’s biosecurity system. Decisions and systems will be regularly reviewed resulting in overall system improvements and provide greater confidence to stakeholders by establishing a clearly independent, statutory role to examine biosecurity functions and processes.
- First point of entry
 - The Quarantine Act currently requires overseas vessels and aircraft entering Australia to arrive at a first port of entry, currently listed in the *Quarantine Proclamations 1998*.
 - The Quarantine Act allows the Governor-General to proclaim a port or a landing place as a first port of entry, which may include conditions or restrictions, (e.g. a port may be limited to receiving a specific class of goods, vessels or aircraft).

In most cases the proposed biosecurity legislation provides the enabling powers for government, with specific details around requirements, implementation and compliance to be included in regulations and administrative guidelines and processes.

There are also provisions within the proposed legislation where there will be neither an increase nor decrease in regulatory burden in comparison to the current legislation. These have not been discussed in this RIS.

Context

Biosecurity is about managing risks in an environment characterised by the continual movement of living things and goods by natural and human processes. Australia's geographical isolation means our country is free from many harmful pests and diseases that exist in other parts of the world.

As globalisation continues to enable passenger and trade volumes to grow and as new products from a wider variety of countries become available, there will be increasing complexity in Australia's biosecurity risk management both in the marketplace and at the border. Effective biosecurity management requires activities offshore, at the border and within Australia.

The Australian Government is committed to maintaining Australia's favourable pest status, which is vital to the future of agricultural production in Australia. It is the role of the government to appropriately regulate importing industries to protect this status. A strong biosecurity system which underpins the production of pest and disease free quality produce, goods, commodities, food and the ability to market this produce, is integral to a profitable agriculture sector.

Australia's favourable biosecurity status underpins Australian exports as it makes Australian products more attractive to international markets. With the number of incursions of pests and diseases increasing, there is an increased demand from international trading partners for greater levels of assurance in relation to exports. In 2012–13, the value to Australia's economy from agriculture, fisheries and forestry production was over \$51 billion with more than 76 per cent (\$39 billion) exported.³

Preventing incursions of exotic pests and diseases not only contributes to our clean and green status, it also protects our local industries and economy, providing flow on benefits for businesses and farmers. It is difficult to measure the economic benefits generated by Australia's biosecurity status. However, recent estimates suggest that in the event of a large multi-state foot and mouth disease outbreak revenue losses of between \$49.3 billion and \$51.8 billion (in present value terms) may be experienced over 10 years.⁴

Our biosecurity status also prevents pests and disease from establishing in Australia that could threaten our human health and Australia's unique natural environment.

³ ABARES 2013, *Agricultural commodities: September quarter 2013*, Australian Bureau of Agricultural and Resource Economics and Sciences, Canberra.

⁴ ABARES (2013), *Potential socio-economic impacts of an outbreak of foot-and-mouth disease in Australia*.

Much has changed since the Quarantine Act was written in 1908. International travel is rapid and routine, there are increasingly coordinated international efforts to respond to disease, and human rights have become paramount in domestic and international law. Today's public health system is much more sophisticated and has adapted to manage cases of disease, or exposure to disease.

An effective and adaptive range of biosecurity measures is therefore required to manage the public health risk posed by serious communicable diseases. It is also important that these measures are balanced with individual rights.

Managing biosecurity risk has become more challenging and complex with the level of risk having increased substantially. This has resulted in the need for a new approach to the management of biosecurity risks. For example, over the last decade aircraft passengers have increased by 80 per cent⁵, the number of sea containers imported has increased by 82 per cent⁶ and bulk cargo imports are up 16 per cent.⁷ In 2012-13, the Department of Agriculture assessed, screened, inspected and /or cleared approximately:

- 186 million international mail articles
- 16 million arriving international passengers
- 16 000 arriving international sea vessels
- 1.7 million sea cargo consignments
- 26 million air cargo consignments.

It is expected that these figures will continue to increase.

New biosecurity legislation, comprising the Biosecurity Bill and Inspector-General of Biosecurity Bill, was developed and released for public consultation in mid-2012.

The proposed biosecurity legislation provides an overarching legislative framework for managing biosecurity. Much of this framework is common, in practical terms, to the existing one or provides the ability to make more detailed regulations, and in isolation does not represent substantive change from current policy or practice.

The Biosecurity Bill is divided into chapters that deal with various aspects of biosecurity risk including:

- assessing and managing the risk of people, goods, aircraft and vessels entering Australian territory

⁵ Bureau of Infrastructure, Transport & Regional Economics, 2013, *International scheduled traffic to/from Australia by financial year* (https://www.bitre.gov.au/publications/ongoing/international_airline_activity-time_series.aspx)

⁶ Ports Australia (<http://www.portsaustralia.com.au>)

⁷ Ports Australia (<http://www.portsaustralia.com.au>)

- monitoring for, responding to and controlling exotic pests and diseases that may be present within Australian territory
- voluntary arrangements between stakeholders and the department to share the responsibility of managing certain biosecurity risks
- managing biosecurity emergencies
- monitoring, investigation and compliance.

The Inspector-General of Biosecurity Bill creates the statutory position of the Inspector-General of Biosecurity to review the performance of functions and exercise of powers under the Biosecurity Bill.

Issues arising from the proposed repeal of the Quarantine Act and the subsequent transition to the Biosecurity Act will be addressed in the Biosecurity (Consequential Amendments and Transitional Provisions) Bill. This will ensure that biosecurity operations and the management of biosecurity risks can continue uninterrupted on and after the commencement of the Biosecurity Act.

Managing biosecurity

In Australia, the management of biosecurity is achieved through collaboration between the Australian Government, state and territory governments, industry participants and the wider community.

Australia's biosecurity system is based on a "risk based" approach to managing biosecurity risk. This approach focuses on the goods and entities that are assessed as being the highest risk and puts a greater emphasis on compliance.

This approach is the most effective and efficient way of managing biosecurity risk while facilitating the movement of goods and people across Australia's borders. High levels of compliance mean that government intervention can be kept to a minimum.

The Australian Government Department of Agriculture is responsible for managing plant and animal biosecurity risks offshore and at the national border, while state and territory governments have primary responsibility for managing pest and disease incursions onshore (i.e. past the national border). This partnership was formalised in 2012 when the Commonwealth and the states and territories (with the exception of Tasmania) signed the Intergovernmental Agreement on Biosecurity.

Other Commonwealth agencies who participate in the biosecurity system:

- The Department of Health is responsible for managing human health biosecurity risks offshore and at the border. It collaborates with state and territory government health agencies and other relevant agencies to develop maintain and provide direction for human health issues and policies to protect Australia from the introduction of serious communicable diseases.⁸
- The Department of Environment is involved in respect of matters about pests that affect Australia's unique environment and to ensure a strategic, effective and consistent approach is used to manage environmental threats.
- The Department of Immigration and Border Protection have shared responsibility with the Department of Agriculture to regulate and control movement into and out of Australia of people, cargo and vessels at airports, sea ports and mail centres.

⁸ Department of Health and Ageing, 'Annual Report, Outcome 14 – Biosecurity and Emergency Response', <http://www.health.gov.au/internet/annrpt/publishing.nsf/Content/annual-report-0809-toc~0809-2~0809-2-3~0809-2-3-14>.

Scope of the problem

Biosecurity risks are changing and in the future Australia's biosecurity system will need to adapt and respond to:

- increasing volume of products and passengers travelling internationally, and the consequential risk of pests and diseases entering Australia
- more frequent severe weather events due to climate change assisting the spread of pests and disease, and changing environmental conditions making it easier for some species to establish in Australia
- decreasing boundary between urban, rural and natural environments making pest and disease management more complicated.

The Quarantine Act has provided for the protection of Australia's biosecurity system and has served successive governments well. However, it has been amended more than 50 times, is not aligned to modern business realities, and has become complex and outdated meaning it is difficult for clients to understand and comply with and for the department to administer efficiently. Issues with the Quarantine Act include:

- Duplication and overlapping powers – there are ten different powers to order goods into quarantine. This causes confusion for importers and others seeking to do the right thing and comply with the requirements of the Quarantine Act.
- Over regulation – the overregulation and lack of flexibility can make it difficult for the Commonwealth to attract some types of partnerships with industry members to manage their own biosecurity risks. This is due to the current arrangements not reflecting the operation and structure of their business. This is particularly true for larger companies with streamlined supply chains and end-to-end processes who may be subject to multiple agreements to cover their operations.
- Lack of civil penalties – limited powers to address the risk posed by people or companies that repeatedly breach the Quarantine Act.
- Limited clarity around first points of entry – all overseas vessels must enter a first point of entry or a proclaimed port, however within the Quarantine Act there is no transparent process for how ports come to be proclaimed or how they can be removed from the list.

Further, there are limited powers in the Quarantine Act that allow for the management of invasive pests onshore. The Commonwealth tends to rely on varying powers in state and territory legislation which are inconsistent and may be insufficient to manage invasive pests effectively. Invasive pests have the potential to significantly reduce farming production, diminish quality of produce and increase pest management costs. For example, the Commonwealth, state and territory governments are working towards the eradication of red imported fire ants. From 2001 to 2012, governments have collectively spent \$411 million (real 2012 dollars) controlling this invasive environmental pest in south-east Queensland.⁹

In addition, under the current regulatory framework Australia cannot give effect to the International Maritime Organization's Ballast Water Management Convention it signed in 2005. Should the Convention be ratified Australia will not be able to implement this Convention.

⁹ Hafi A, Spring D, Croft L, Kompas T & Morey K, 2013, *Cost-effectiveness of biosecurity response options to red imported fire ants in South East Queensland*, ABARES report to client prepared for the National Biosecurity Committee, Canberra, June.

Objectives

The Australian Government is committed to supporting a vibrant, innovative and competitive agricultural sector. Maintaining a strong biosecurity system is vital and it protects farmers from incurring higher costs of production and/or loss of markets, both domestically and internationally.

The Australian Government is committed to reducing unnecessary regulatory and administrative burden on users of the biosecurity system, whilst still ensuring a robust set of powers and mechanisms to protect Australia's unique biosecurity status and environment.

In order to meet these commitments Australia's biosecurity system needs:

- to manage Australian biosecurity risks to an acceptable level and subsequently manage the impact associated with biosecurity incidents (such as the introduction of pests and diseases into Australia)
- to maximise the economic efficiency of the management of biosecurity risks
- greater legislative coverage and coordination between state and territories and the Commonwealth for combating incursions of pests and diseases within Australia during an outbreak, for example, of avian influenza or an incursion of Asian gypsy moth
- flexibility and the provision of regulatory certainty to businesses, industry and government
- greater shared responsibility between the Australian, state and territory governments, and between government, business and the wider community.

Options

Three options have been explored to address the scope of the problem with the Quarantine Act and meet the objectives of the Australian Government. These options are:

Option one: maintain the status quo

The status quo involves maintaining the current regulatory approach, which is the Quarantine Act and associated subordinate instruments. For the purposes of analysis for this RIS, the status quo is assumed to maintain:

- industry participants partnership arrangements administered under two separate sections in the Quarantine Act (sections 46A and 66B)
- the current approach to designating first ports of entry, whereby overseas vessels must enter Australia at a first port of entry proclaimed under the Quarantine Act
- the current governance arrangements
- limited powers in post-border space
- a rigid enforcement regime with only the ability to undertake criminal prosecution.

Option two: new biosecurity legislation

The proposed biosecurity legislation would replace the century old Quarantine Act and aims to create a responsive and flexible operating environment. It is based on five key themes; managing risk effectively, improving productivity, strengthening partnerships, sound administration, increased transparency.

The proposed new legislation will allow for better management of the risks of animal and plant pests and diseases entering, establishing and spreading in Australia and potentially causing harm to people, the environment and the economy. The proposed biosecurity legislation will:

- reduce complexity and provide certainty, making it easier for the Commonwealth to regulate and for stakeholders to understand their obligations (i.e. by removing duplicative provisions and clarifying powers)
- introduce new powers to address all biosecurity risks, including the risks posed by ballast water and new onshore powers
- have powers to more effectively penalise people and entities that breach biosecurity laws and prevent them from gaining approvals to undertake activities without Commonwealth supervision (i.e. range of penalty options; fit and proper persons test; associates test)

- reduce regulatory burden for some businesses and people who do the right thing and target resources to the areas of highest risk (i.e. whole of supply chain approved arrangements, service delivery).

Option three: no regulation or self regulation

This option would involve no government biosecurity controls and no measures to mitigate biosecurity risks to Australia.

A 'self regulation' option would involve industry participants leading risk mitigation measures and taking responsibility for managing these risks. As self regulation measures can have no legal basis, their success relies on there being sufficient incentive to business to act in a way that mitigates risk (such as potential loss of revenue). However, market forces are not sufficient incentives for businesses to mitigate and appropriately manage many of the biosecurity risks as they may limit their management activities to identifying and preventing harm to their own business rather than identifying and preventing harm to other industries, the Australian environment and public health.

No regulation or a reliance on self regulation is not the preferred option as it fails to adequately manage biosecurity risk. For this reason this option is not addressed in the impact analysis and compliance costs chapter.

Impact analysis and compliance costs

This section will examine the costs and benefits of the two feasible options presented in the Options chapter: maintaining the status quo, and adopting the proposed biosecurity legislation. It also estimates the compliance costs of the proposed legislation compared to business as usual under the current legislation.

This chapter is divided into the following subheadings:

- Approved arrangements
- Ballast water management
- Inspector-General of Biosecurity
- First points of entry

These subheadings represent the areas of the proposed legislation that will either impose a cost or result in savings for businesses, individuals and the wider community.

There are several minor impacts associated with the proposed legislation which are qualitatively described in [Appendix A: Minor impacts of adopting the proposed biosecurity legislation](#).

Approved Arrangements

Nature of the problem

The Quarantine Act requires that quarantine related activities are performed by officers or under their direct supervision. Sections 46A and 66B of the Quarantine Act create an exemption where approved industry participants can voluntarily enter into arrangements with the Commonwealth to perform some of these functions themselves.

- Section 46A: allows the Director of Quarantine to approve a premise for the purpose of receiving, storing and dealing with goods subject to quarantine, referred to as a quarantine approved premises (QAP).
- Section 66B: allows the Director to enter into a compliance agreement with an industry participant, which requires the participant to perform specific tasks in relation to goods that are subject to quarantine in an agreed manner.

These partnerships allow the responsibility for management of biosecurity risks to be shared between government and industry participants. The industry participant may choose to enter into an arrangement and perform particular biosecurity activities themselves, if they conclude there is a benefit in doing so (such as savings in time and money).

In practice, some industry participants that enter into an arrangement are required to seek a QAP approval for each location where they operate. Some may also be required to enter into one or more compliance agreements to cover their different biosecurity activities. The complexity and duplication caused by the overlapping schemes creates an unnecessary regulatory burden for industry participants and imposes a significant administrative burden on the department. It can also hinder the Commonwealth from taking into account different business systems that already exist within industry, even though they may achieve the desired result of managing biosecurity risks.

The overregulation and lack of flexibility can also make it difficult for the Commonwealth to attract some types of partnerships with industry members to manage their own biosecurity risks, because the current arrangements do not reflect the operation and structure of their business. This is particularly true for larger companies with streamlined supply chains and end-to-end processes.

Current levels of industry participation mean that responsibility for protecting Australia's international borders primarily falls on the Commonwealth, which can increase the risk of 'moral hazard'. Moral hazard occurs when an individual or organisation is insulated from a risk or does not bear the cost of a risk occurring. Consequently the individual or organisation behaves differently, with a tendency to act less carefully than they otherwise would to mitigate the risk (as they have less incentive to work to reduce the probability of the risk occurring). For example, a company that imports goods may not adequately ensure the packaging for their goods contains no pests or disease before it enters Australia, because the responsibility for checking the goods falls on the Commonwealth.

This issue with the Quarantine Act was noted in a submission from the Quarantine and Exports Advisory Council to the Beale review, stating:

"The responsibility of managing risk should not be a sole AQIS responsibility but be spread across corporate Australia. There should be a legislative mechanism to ensure corporate Australia and importers take responsibility for managing the risk by ensuring appropriate systems and procedures are in place."¹⁰

The expected increase in the volume of goods, aircraft, vessels and people coming into and out of Australia means the pressure on the Commonwealth will continue to increase in the future. It is therefore in the Commonwealth's interests to seek out better and more productive working relationships with industry to share the responsibility for managing Australia's biosecurity risks.

¹⁰ Quarantine and Exports Advisory Council submission to the Beale review, p.3.

Why the change is being proposed?

Under the new biosecurity legislation it is proposed that the QAP and compliance agreement sections of the Quarantine Act are merged into a single approved arrangements scheme, covering both premises and the activities undertaken to manage biosecurity risks.

Industry members would be able to make a single application to enter into one arrangement with the Commonwealth that covers all of their business locations and activities. This removes the current complexity and duplication in the Quarantine Act, reduces the unnecessary regulatory burden experienced by industry and allows the Commonwealth to better recognise business practices that can meet Australia's biosecurity requirements through other means.

By encouraging more industry members to share the responsibilities for managing biosecurity risks, the approved arrangements process can also help reduce the 'moral hazard' risk discussed above.

Options to address the problem

Option 1: maintain the status quo

Under the Quarantine Act, some QAPs and compliance agreements are already in place that achieve, to some extent, the benefits of partnerships between industry participants and the Commonwealth. However, a number of aspects of the current arrangements are sub-optimal and do not achieve the full potential benefits or participation levels possible from these types of partnerships. For example, the two schemes can overlap and contain duplicative and unnecessarily complex processes. This means that some large importers are subjected to unnecessary levels of regulation and administrative complexity in order to take advantage of partnership arrangements.

The duplication between the schemes and the complexities that can be involved in seeking an approval or entering into an arrangement can mask some of the potential advantages industry members perceive in having an arrangement. As a result, they are less likely to enter into an arrangement, their expertise is not being utilised and there may be higher costs to participants and government because biosecurity activities are instead being performed by the Commonwealth as an additional activity and not built into existing processes.

Continuing the current legislation would lead to the continuation of these problems and therefore is not considered optimal and may lead to issues which inhibit biosecurity risk management.

Option 2: adopt the proposed biosecurity legislation

The proposed approved arrangement provisions will consolidate the existing QAP and compliance agreements provisions into a single approved arrangement scheme. This will remove the unnecessary complexities and administrative burden, broaden the scope and flexibility of the types of arrangements that can be entered into between industry and the Commonwealth and better enable businesses to enter into an agreement that reflects the operation and structure of their business.

This option is preferred as it enables improved partnerships between industry and government, leading to better biosecurity risk management outcomes.

By reducing unnecessary regulatory and administration burden, it is expected that biosecurity resources will be better focused on biosecurity risks that may cause the most harm and therefore the effectiveness of biosecurity risk management.

Compliance costs on business

QAP and compliance agreements are voluntary under the Quarantine Act and would continue to be so under the proposed biosecurity legislation. Therefore, any costs associated with these arrangements are incurred voluntarily by businesses.

Industry participation is most beneficial where participants have an advantage over government in providing a particular service or facility and can save time and/or money by performing an activity themselves. For example, where industry participants are able to undertake activities that meet the Commonwealth's biosecurity requirements as part of their usual business processes, they can avoid the need for and cost of supervision by a biosecurity officer at that stage.

Participation in the proposed approved arrangements can occur through businesses transitioning from QAPs or compliance agreements to approved arrangements and from new partnerships being entered into when businesses see a net benefit. It is also possible that some businesses will choose not to continue in partnership and will decide not to apply for an approved arrangement where it is not advantageous to do so.

Benefits and costs to business transitioning to approved arrangements

Under the proposed biosecurity legislation, businesses that are transitioning to an approved arrangement benefit from a reduction in the administrative costs faced each year, particularly when going from many arrangements to one. This is particularly the case where a business currently has to hold several agreements to cover their operations, such as multiple QAPs and compliance agreements. Currently, businesses must renew a QAP each year, completing a full application in order to do so. Compliance agreements are renewed regularly up to a maximum of every three years. Under the proposed approved arrangements, the department can move away from yearly renewals to a model where renewals are required less frequently. This can result in substantial administrative cost savings to businesses.

Businesses are also anticipated to benefit from reduced audit frequencies under the proposed legislation. Currently, QAPs are audited at least twice a year and compliance agreements similarly. Under the proposed legislation it is expected that the average business will be audited approximately once a year (Note: audit frequencies will ultimately depend on a range of factors including compliance and performance, and audit rates cannot be guaranteed).

During the transition to approved arrangements, it is likely that businesses will not face any substantial additional costs. The full operational details of the application processes, (such as the required content and supporting documents), and training requirements are currently being developed. However, transitioning businesses are likely to have much of the relevant documentation already at hand and will have previously completed relevant training. If current QAP arrangements with the department meet the requirements in the legislation for an approved arrangement, it is likely that they will be able to continue as an approved arrangement under the proposed biosecurity legislation. (Note: each arrangement will be considered on its individual merits, so approval cannot be guaranteed).

Compliance costs were discussed from a qualitative perspective with stakeholders and clients during the consultation process. This was due to the variety of participating clients, the number of existing agreements and the fact that approved arrangements are voluntary. Some stakeholders did indicate, during the consultation process, their preference to move to approved arrangements based on potential financial gains. The approved arrangements provisions also received very few opposing comments during the consultation. Based on this it seems likely that most businesses currently under QAPs or compliance agreements will apply to continue their arrangement with the Commonwealth through the proposed approved arrangements scheme in order to continue the financial benefits of the partnership.

This includes:

- companies with a single QAP or compliance agreement that will transition to an approved arrangement
- companies with multiple QAPs and/or compliance agreements that will transition to an approved arrangement
- Benefits to business transitioning from single agreement.

Businesses with a single QAP or compliance agreement will benefit when transitioning to the proposed approved arrangements scheme. Based on 2014 departmental statistics and trends, there are nearly 1 600 businesses that are expected to transition to an approved arrangement from either a single QAP or compliance agreement. Noting the voluntary nature of approved arrangements only a few stakeholders provided feedback on the opportunities for regulatory burden reduction and the decreased overall costs to industry during the general consultation undertaken in 2012. Under the proposed legislation, these businesses will have an overall reduction in regulatory cost of just over \$1.2 million a year averaged over ten years, compared to the status quo (Table 1).

Table 1 Average annual compliance costs for businesses transitioning from single agreements

	Current legislation	Proposed legislation	Net cost under proposed legislation
Cost type	\$	\$	\$
Administrative	2 031 022	1 025 689	—1 005 333
Substantive compliance	502 387	231 358	—271 028
Total average annual compliance costs	2 533 409	1 257 048	—1 276 361

Note: Based on costs of an average business with a quarantine approved premises or compliance agreement under the current legislation. Under the proposed legislation, it is expected that 1 598 businesses with single agreements will transition to an approved arrangement. The majority of businesses will transition to approved arrangements during the first year following the Biosecurity Act's commencement, and all transitions must be finalised within 18 months. Those businesses that take the additional six months to transition may have a small delay in the realisation of the benefits under the proposed biosecurity legislation, which will have a negligible impact on overall costs. Costs have been averaged over ten years and do not include any delayed benefit for particular businesses.

Data source: Department statistics

Benefits to business transitioning from multiple agreements

Currently, in order to enter a partnership with the department, some businesses need to hold several agreements with the Commonwealth to cover their entire operations. The effects of the proposed biosecurity legislation can be explored by looking at an average business that has multiple agreements, on average such a business will have five QAPs and one compliance agreement under the Quarantine Act (Box 1).

Box 1: Average business transitioning from multiple agreements

Company A is a large business based in Sydney that imports a range of food and plant products into Australia before distributing its products to customers. Company A has entered into partnership agreements with the Commonwealth to reduce its costs by managing some of the biosecurity risk posed by the imported goods itself. Under the current legislation, the company has to hold multiple agreements – five QAPs to allow the receiving, storing and dealing with goods subject to quarantine; and one compliance agreement to allow the transport of these goods between ports and the QAPs.

Company A faces ongoing administrative costs to maintain its agreements. It has to renew each QAP annually and its compliance agreement every three years. Company staff undertake reaccreditation training each year as part of the agreement conditions. Each QAP and the compliance agreement are audited twice a year to ensure biosecurity risks are being managed appropriately.

Under the proposed biosecurity legislation, Company A would only require one agreement with Commonwealth – an approved arrangement. Company A has a history of complying with the legislation and has biosecurity risk management controls in place throughout its supply chain to manage the biosecurity risks associated with the goods it imports. As a result it is approved to transition to an approved arrangement.

Company A faces minimal cost to transition to an approved arrangement as it already has documents demonstrating its biosecurity risk management systems and has met training requirements. It then has reduced ongoing administrative costs under an approved arrangement, primarily as a result of not having to renew its agreements as frequently.

Table 2 shows the benefits to Company A of transitioning to an approved arrangement under the proposed biosecurity legislation. Over ten years, Company A saves an average of \$8 986 a year by transitioning to an approved arrangement.

Table 2 Average annual compliance costs for Company A

	Current legislation	Proposed legislation	Net cost under proposed legislation
Cost type	\$	\$	\$
Administrative	8 035	642	—7 393
Substantive compliance	1 737	145	—1 593
Total average annual compliance costs	9 773	787	—8 986

Note: Company A is an average company with five quarantine approved premises and one compliance agreement under the current legislation. Under the proposed legislation, Company A can transition to a single approved arrangement. Costs have been averaged over ten years.

Data source: Department statistics

Based on 2014 departmental statistics of the number of businesses with multiple agreements and the average annual revocation of agreements, it is expected that 704 businesses holding multiple agreements will seek to transition to an approved arrangement. As the arrangements are voluntary it is assumed businesses would seek their lowest cost option. Overall these businesses will be better off by an average \$6.9 million a year over ten years (Table 3). This reduction in compliance costs is a result of lower administrative costs through reduced frequency of application renewals and audits.

Table 3 Average annual compliance costs for businesses transitioning from multiple agreements

	Current legislation	Proposed legislation	Net cost under proposed legislation
Cost type	\$	\$	\$
Administrative	6 146 997	451 868	—5 695 129
Substantive compliance	1 329 080	101 925	—1 227 155
Total average annual compliance costs	7 476 077	553 793	—6 922 284

Note: Based on costs of an average business with five quarantine approved premises and one compliance agreement under the current legislation. Under the proposed legislation, it is expected that 704 businesses with multiple agreements will transition to a single approved arrangement. The majority of businesses will transition to approved arrangements during the first year following the Act’s commencement, and all transitions must be finalised within 18 months. Those businesses that take the additional six months to transition may have a small delay in the realisation of the benefits under the proposed biosecurity legislation, which will have a negligible impact on overall costs. Costs have been averaged over 10 years and do not include any delayed benefit for particular businesses.

Data source: Department statistics

Costs to business not transitioning

Under the proposed legislation, some businesses may decide not to apply for an approved arrangement and instead let their approvals and agreements with the Commonwealth lapse. As a result, these businesses would no longer be able to manage their own biosecurity risks and would instead face the standard operational costs associated with inspection by department officers. However, given the large commercial benefit of having an arrangement, it is likely that only businesses who no longer receive that commercial benefit anymore (for example, they have changed their business structure) will decide to not apply for an arrangement under the proposed biosecurity legislation.

New opportunities for business

The new arrangements will improve the application process and make the scheme more attractive and will also clarify the requirements to have an arrangement for industry members, making the potential benefits for industry clearer and encouraging more to apply if they see a benefit to doing so.

The improved flexibility of approved arrangements is likely to encourage more industry members to apply. This applies in particular to larger industry participants that control the whole of supply process for their commodity or product that would have found it difficult to match the duplicative and more restrictive provisions under the Quarantine Act to their modern business practices. However, smaller industry participants are also expected to benefit under the proposed biosecurity legislation.

It is reasonable to assume that businesses who do not currently have a partnership agreement with the Commonwealth will apply for an approved arrangement in cases where they believe there is a net benefit from doing so (over a reasonable timeframe for investment) and they can effectively manage biosecurity risks using their own systems. This would not occur if an industry participant thought that moving to a broader arrangement under the new model would be too costly or not deliver the benefits in the long term to justify the implementation costs.

The following scenario gives an indication of the types of benefits a larger importing company may see under the proposed biosecurity legislation (Box 2).

Box 2: Example of large importer entering an approved arrangement

Company B is a large importer of goods, which it has been importing into Australia for many years without any breaches of the Quarantine Act. On average Company B imports 20 000 containers each year. The goods that Company B imports pose a potential biosecurity risk to Australia. Under the Quarantine Act, these containers are subject to inspection and screening by quarantine officers on arrival, regardless of the company's compliance history or the biosecurity controls it has in place. While the containers are being inspected, Company B faces expenses for container hire, wharf fees and other cargo-based costs.

Company B could conduct its own inspections of the containers, and hence reduce its costs, by entering into a partnership arrangement with the Commonwealth. However, under the current legislation Company B would need to hold multiple QAPs approvals and compliance agreements in order to cover its entire supply chain. The duplication, complexity and administrative burden in these processes, (and the costs associated with them), reduce the potential benefits that could be realised by Company B and deters the company from entering into a partnership with the Commonwealth. This means the

expertise that Company B holds in managing biosecurity risk is not utilised and Company B does not reduce the costs accrued while its containers are being inspected.

Under the proposed biosecurity legislation, Company B would only require one agreement with the Commonwealth – an approved arrangement. The company can clearly understand and assess the potential benefits of an arrangement and chooses to apply for one. As the company has a history of general compliance with the legislation and has biosecurity risk management controls in place throughout its supply chain to manage the biosecurity risks associated with the goods it imports, it is approved.

Under an approved arrangement, Company B can inspect its own containers for biosecurity risks. This can be done as part of its existing processes and therefore presents a reduced cost compared to the inspections being conducted by a biosecurity officer. It is likely some containers will still be inspected at random by biosecurity officers to confirm that biosecurity risks are being managed appropriately.

Table 4 shows the benefits to Company B under the proposed biosecurity legislation compared to business as usual. Under the proposal, Company B is better off by around \$19 000 a year averaged over ten years.

Table 4 Average annual compliance costs – example of a large importer

	Current legislation	Proposed legislation	Net cost under proposed legislation
Cost type	\$	\$	\$
Administrative	0	627	627
Substantive compliance	25 000	5 246	—19 754
Total average annual compliance costs	25 000	5 874	—19 126

Note: Company B imports 20 000 containers. Under the current legislation, Company B is deterred from entering an agreement with the government because the current system is not suited to their business structure and would result in large administrative costs. Under the proposed biosecurity legislation, Company B can enter an approved arrangement that covers their entire supply chain and as a result faces lower cargo-based expenses. Costs include administrative costs and cargo-based expenses and are averaged over ten years.

Data source: Department and industry statistics

Approved Arrangements overall compliance costs

Under the proposed biosecurity legislation, the compliance cost burden on industry is estimated to be reduced by at least \$8.2 million a year averaged over ten years (Table 5). This is the benefit to transitioning businesses, primarily through reduced administrative costs from lower renewal frequencies. It is expected that the actual savings to business will be even higher as more businesses are likely to be attracted to enter a partnership with the department. This estimate is based on general feedback received during the consultation undertaken in 2012.

Table 5 Average annual compliance costs for existing businesses – approved arrangements

	Current legislation	Proposed legislation	Net cost under proposed legislation
Cost type	\$	\$	\$
Administrative	8 178 019	1 477 557	—6 700 462
Substantive compliance	1 831 467	333 284	—1 498 183
Total average annual compliance costs	10 009 486	1 810 841	—8 198 645

Note: Based on costs of businesses with a quarantine approved premises, compliance agreement or multiple of these under the current legislation. Under the proposed biosecurity legislation, it is expected that around 2 300 businesses with single or multiple agreements will transition to an approved arrangement. It is likely that more businesses will seek an agreement for the first time under the proposal, which will reduce the net cost to business further. Costs have been averaged over ten years.

Data source: Department statistics

Regulatory benefit of approved arrangements

The proposed biosecurity legislation broadens the responsibility for biosecurity risk management, leading to better outcomes for business and Australia's biosecurity risk management. It builds on and expands the existing benefits to the Commonwealth and industry members by improving partnerships to manage biosecurity risk and allowing industry to contribute to managing biosecurity risk in return for a commercial advantage. As well as better risk management outcomes, the proposed biosecurity legislation is also likely to reduce the costs of compliance for industry participants, largely through reduced administrative burden. By reducing unnecessary regulatory and administration burden, it is expected that biosecurity resources will be better focused on biosecurity risks that may cause the most harm and therefore the effectiveness of biosecurity risk management.

Currently, some industry participants are required to hold multiple approvals and agreements with the Commonwealth. These can be rolled into one approved arrangement process covering the different locations and biosecurity activities being conducted by an industry participant, thereby reducing costs. Further, businesses may experience less disruption to their business processes as the audit and compliance program could be aligned with a single approved arrangement, rather than having multiple audits for multiple existing agreements. Both existing and prospective businesses will benefit through lower compliance costs as a result of the simplified application and renewal process for arrangements under the proposed biosecurity legislation.

Ballast water management

Nature of the problem

Ballast water is carried in vessels to maintain safety and stability at sea. It is vital to most cargo loading and unloading activities. Vessels take up or discharge ballast water to compensate for change in cargo and fuel loads or weather conditions.

When ballast water is taken up, marine organisms can be picked up with it and then released when the ballast is discharged. Because of this, ballast water is recognised as a major source of the spread of marine pests around the world, including pests such as bacteria, microbes, small invertebrates, eggs, cysts and larvae of various species. It has been estimated that 10 000 different species are moved around the world in ballast water tanks each day.¹¹ Introduced marine pests can cause serious environmental and economic damage. For example, an invasion of comb jelly in the Baltic Sea led to the collapse of most of the region's fishing industries, valued at an estimated \$US500 million a year.¹² In Australia, the Northern Pacific seastar was introduced to Tasmania through ballast water from Japan in the 1980s and into Victoria through ballast water in the 1990s.¹³ It has reduced shellfish production in Tasmania and damaged marine ecosystems in both locations.

The biosecurity risks associated with ballast water can be managed by the vessel using fresh water, conducting a ballast water exchange or using a ballast water treatment system. Fresh water as ballast water has a low risk of introducing marine pests. Ballast water exchange reduces the likelihood that coastal aquatic species will be transferred to a new area, as the ballast water is discharged by replacing ballast water (usually coastal water taken up at a port) with deep ocean or open sea water during a voyage. A ballast water treatment system treats ballast water onboard to reduce risk, and includes systems using ultraviolet radiation or chemicals.

Commonwealth powers to manage biosecurity risks associated with ballast water are currently contained within section 78A(3)(a)(ii) of the Quarantine Act, which allows for a direction to be given in relation to the storing, discharging, or treating of ballast water; and section 78(3)(a)(iv), which allows for a direction to be given in relation to an exchange of ballast water. Section 22 of the *Quarantine Regulations 2000* also details the record keeping requirements for vessels that are capable of discharging and exchanging ballast water.

¹¹ Low T. (ed) 2003, *Ballast Invaders: the Problem and Response*, prepared for Invasive Species Council.

¹² *Ibid.*

¹³ Ronald E. Thresher (1999) Diversity, Impacts and Options for Managing Invasive Marine Species in Australian Waters, *Australian Journal of Environmental Management*, 6:3, 137-148.

Australia has taken a lead role in seeking international measures to manage the biosecurity risk posed by ballast water, first raising the issue at the International Maritime Organization (IMO) in 1991. After negotiations between IMO member states, the *International Convention for the Control and Management of Ships' Ballast Water and Sediments* (the Convention) was adopted in 2004. The Convention has been developed to provide a global framework for countries to prevent, reduce and control the harm caused to the marine environment by invasive marine pests contained in ballast water (and ballast water sediment).

Australia signed the Convention, subject to ratification, in May 2005 and as a signatory is obliged to refrain from actions that would defeat the object and purpose of the Convention. The Convention will enter into force and become mandatory 12 months after it is adopted by 30 countries representing 35 per cent of the world merchant shipping tonnage. As of 9 January 2014, the Convention had been adopted by 38 countries representing just over 30 per cent of world merchant shipping tonnage.

The proposed biosecurity legislation implements the majority of the Convention by introducing stricter ballast water management requirements than currently in place under the Quarantine Act. The proposed biosecurity legislation will need to be amended to fully implement the Convention when it is ratified. Until the Convention comes into force, a more flexible transitional scheme will be in place that allows vessels to meet the requirements of the proposed biosecurity legislation through ballast water exchange and it will not be mandatory for all vessels to have a ballast water treatment system. This gives business the flexibility to choose their most cost-effective option to meet the requirements.

Why the change is being proposed?

In order to implement the Convention, Australia needs to adopt a different system of ballast water management to manage all ballast water – not just international ballast water – and place particular requirements on all vessels capable of carrying ballast water. The current drafting of the Quarantine Act does not clearly support the implementation of the Convention and it would most likely need extensive structural reforms to give full effect to its requirements.

Options to address the problem

Option 1: maintain the status quo

As outlined above, the current legislation cannot fully give effect to Australia's international obligations under the Convention. While sections 78A(3)(a)(ii) and (iv) of the Quarantine Act allow quarantine officers to direct vessels for the management of their ballast water, this only applies in relation to international vessel arrivals and does not cover domestic ballast water. Similarly, section 22 of the Quarantine Regulations requires only international vessels to keep a record of their ballast water operations. The Quarantine Act has no specific provisions requiring vessels to have a ballast water management plan or a ballast water certificate.

Currently only international ballast water is managed by the Commonwealth. Domestic ballast water, with the exception of within Victoria's state jurisdiction, is not regulated and there is no consistent Australia-wide approach. This can encourage separate jurisdictions to create their own schemes, potentially leading to duplication and confusion in the regulation of ballast water movements, rather than effective safeguards. The states and territories, recognising this, have supported the development of the proposed ballast water legislation by the Commonwealth.

Continuing to regulate under the current Quarantine Act would restrict Australia's ability to implement its international obligations and make it more difficult to introduce a nationally consistent biosecurity risk management approach to ballast water. On this basis, it is not the preferred option.

Option 2: adopt the proposed biosecurity legislation

The proposed biosecurity legislation manages both domestic and international ballast water as required by the Convention. However, to make the transition easier for businesses, the proposed biosecurity legislation gives greater flexibility to businesses in the way they choose to manage ballast water.

Under the proposed biosecurity legislation, it will be an offence for the person in charge of a vessel to discharge ballast water in Australian seas unless one of the following is met:

- it has been managed for discharge using an approved method, such as a ballast water treatment system
- it has been exchanged in an acceptable location, such as outside Australian territorial seas
- it has been discharged at an approved reception facility

- the vessel has received an exemption from the Director of Biosecurity (as the Secretary of the Department of Agriculture) for one or more discharges of ballast water that are part of the vessel's voyages between specified ports or locations
- an exception applies as the discharge of ballast water occurs in the same port or point where the ballast water had been taken up
- an exception applies as the discharge has occurred for reasons of safety, an accident or avoidance of pollution.

All vessels capable of carrying ballast water must have a ballast water record system that complies with the requirements as prescribed by the regulations.

Once the Convention is ratified, vessels will need to have a ballast water treatment system installed after a transition period (based on the vessel's age and size) identified in the Convention. The proposed biosecurity legislation does not require businesses to install a ballast water treatment system in their vessels, but establishes a framework that can continue to be used in the future once the Convention is ratified and the legislation amended. Under the Convention, vessels with onboard ballast water treatment systems must have a current ballast water management plan and a ballast water management certificate. Accordingly, the proposed biosecurity legislation provides for management plans and certificates. The plan must be approved by the Director of Biosecurity. A ballast water management certificate certifies that a vessel has an approved ballast water management plan, and that any equipment on the vessel, (such as a ballast water treatment system), is capable of giving effect to the plan. The Director of Biosecurity has the power to authorise a person with appropriate expertise to be a survey authority to issue certificates.

The proposed biosecurity legislation will cover the field in relation to ballast water and avoid the development of separate, fragmented, and potentially conflicting state-based systems. However, it is not intended to exclude or limit the concurrent operation of State or Territory laws in respect of the treatment or disposal of ballast water after it has been removed from a vessel. This recognises that State and Territory environment protection laws may impose additional requirements once the ballast water has been released or removed from the vessel.

Overall, these new powers will help ensure that all Australian and foreign flagged vessels in Australian seas manage their ballast water in a way that helps reduce the risk posed to Australia's marine environments and is consistent with the principles of the Convention. This makes it the preferred option.

Compliance costs on business

Under the current arrangements, vessel operators must manage their ballast water if they intend to discharge ballast water after entering Australian seas from an overseas port or waters, or enter Victorian state waters from Australian port or waters.

The proposed legislation will require vessel operators to manage their ballast water when the vessel is:

- entering Australian seas from an overseas port or waters, and
- travelling domestically from Australian ports or waters.

Under the current and proposed biosecurity legislation, ballast water can be managed by exchanging the vessel's ballast water in deep ocean outside of Australian territorial seas. Under the proposed biosecurity legislation, vessels may also manage their ballast water by using a wider range of options, including a ballast water treatment system.

If a vessel wishes to rely on a treatment system to manage its biosecurity risks, it will be required to have a ballast water management plan and a ballast water certificate to discharge in Australian waters. However, it is not currently mandatory for vessels to have a ballast water treatment system under the proposed biosecurity legislation, and the option to use ballast water exchange to manage their risks will be available. Vessels may retro-fit a ballast water treatment system to their vessel if they see a commercial advantage in doing so, but this is not required.

Ballast water treatment systems tend to be a more feasible option for new-build vessels, as businesses would incur a substantial cost to retrofit a system. Given the average age of a vessel in the Australian trading fleet is 16.7 years,¹⁴ it is unlikely that any Australian vessels currently have a ballast water treatment system.

Vessels entering Australian seas (international arrivals)

Under both the current and proposed biosecurity legislation, vessels arriving from overseas ports or waters must manage their ballast water. Different vessels will face different costs. This is explored further in Box 3.

Box 3: Example of vessel without a ballast water treatment system

Vessel A begins travel from China to the port of Newcastle, Australia. The vessel carries ballast water originating from the waters of China. Vessel A is an older vessel that does not have an inbuilt ballast water treatment system. Before arriving at Newcastle, Vessel A fills out a questionnaire issued by the Department of Agriculture, noting that it has ballast water tanks able to discharge ballast water.

¹⁴ BITRE 2013, *Australian Sea Freight 2011–12*, Bureau of Infrastructure, Transport and Regional Economics, Canberra.

Under section 78A of the Quarantine Act, a quarantine officer may give Vessel A a particular direction to deal with its ballast water. In this instance, the officer directs Vessel A to exchange its ballast water prior to entering Australian territory, in order to manage the biosecurity risk.

Under the proposed biosecurity legislation, Vessel A is subject to the new ballast water requirements. It does not need a ballast water management plan because it does not have a ballast water treatment system on board. Therefore Vessel A also does not need a certificate stating that the system is operating effectively (as this is only compulsory for vessels that have a treatment system).

Under the proposed biosecurity legislation, Vessel A¹ may do any of the following:

- exchange its ballast water in an acceptable location and manner
- discharge its ballast water at a reception facility approved by the Director of Biosecurity.

Vessel A chooses to exchange its ballast water shortly before entering Australian territory. The operator of the vessel records the discharge of ballast water from China and the uptake of new ballast water just outside of Australian waters, as required under the legislation.

¹Assuming Vessel A does not meet one of the safety, accidents or pollution exceptions in the proposed biosecurity legislation.

There are unlikely to be significant additional compliance costs for international arrivals under the proposed biosecurity legislation before the Convention comes into effect. The current requirements placed on vessels – including record-keeping, completing a questionnaire and managing ballast water – are the same under the proposed biosecurity legislation. It is only vessels that already have a ballast water treatment system (of which there are few if any) that will face the additional cost in order to obtain a ballast water management plan and certificate. As discussed above, vessels will not yet be required to have a treatment system and are only expected to install one if they see a commercial benefit in doing so.

Vessels moving within Australian seas (domestic movements)

Vessels travelling within Australian waters are not regulated under the Quarantine Act with regard to ballast water. Domestic vessel movements are only regulated under Victorian legislation when they enter Victorian state waters. Vessels intending to discharge water in Victorian state waters must complete an online risk assessment tool to establish whether its ballast water is high risk (i.e. the ballast water they have picked up is likely to contain exotic marine pests that are capable of establishing in Victorian waters). Vessels that have high-risk ballast water commit an offence if this water is discharged in Victorian waters. To avoid this, vessels may exchange ballast water outside 12 nautical miles. This involves discharging the high risk ballast water and taking up new, low-risk ballast water. Vessel masters must keep a record of all ballast water operations.

The proposed biosecurity legislation makes it an offence to discharge ballast water in all Australian seas. Vessel operators must complete a pre-arrival report with information on the number and volume of ballast water tanks, the date and volume of ballast water uptake and proposed date of discharge in the port of destination. This allows the biosecurity risk of the ballast water to be assessed. If a vessel's ballast water poses a high biosecurity risk, it must be managed in an approved way, such as exchange outside 12 nautical miles from the shoreline. If the ballast water is low risk, a vessel operator may apply to the Director of Biosecurity for an exemption to cover one or more discharges as part of specified voyages. Box 4 gives an example of the compliance costs faced by a vessel travelling domestically.

Box 4: Example of a vessel travelling domestically

Vessel C originates from Tasmania, Australia. It has ballast water onboard and undertakes a number of voyages between Australian ports for commercial purposes.

Vessel C must travel from the Port of Devonport to the Port of Melbourne and then on to Fremantle Port. Under the Quarantine Act, domestic vessels are not regulated and Vessel C is only subject to regulation when it enters Victorian State waters. Prior to reaching the Port of Melbourne, Vessel C's operator completes a ballast water report form and a ballast water log and submits the report electronically to the Victorian authorities. Vessel C is not able to discharge ballast water unless Victorian authorities have received this paperwork and provided written authorisation.

The Victorian authorities assess Vessel C as having low risk domestic ballast water, which means it can discharge its ballast water in Victorian state waters. If Victorian authorities assess Vessel C as having high-risk domestic ballast water, Vessel C would be subject to a penalty under Victorian legislation if it discharged ballast water within Victorian State waters. This can be avoided if it discharges its ballast water and takes up new ballast water, shortly before entering Victorian state waters as part of its journey.

Under the proposed biosecurity legislation, Vessel C is regulated when travelling between all states and is required to maintain records of any ballast water operations. Before arriving at the Port of Melbourne, Vessel C fills out an electronic pre-arrival report issued by the Department of Agriculture, noting that it has exchanged its ballast water with low-risk ballast water outside 12 nautical miles en route, and has maintained ballast water records. Based on the answers to the report, Vessel C is assessed as low biosecurity risk. When Vessel C docks at the Port of Melbourne, an officer requests the operator of Vessel C provide the ballast water records for checking. The operator of Vessel C complies. After inspecting the records the officer is satisfied that Vessel C is complying with the legislation.

Vessel C then departs for Fremantle Port. Prior to arriving, Vessel C fills out the same pre-arrival report by the Department of Agriculture, and is again assessed as low risk. An officer at the port requests evidence in the form of records again, which Vessel C produces. The officer is again satisfied that Vessel C is complying with legislation.

As of December 2012, there were approximately 73 Australian commercial vessels making domestic voyages to which the proposed legislation would apply (excluding international vessels continuing on domestic movements). These vessel operators will face additional costs under the proposed legislation, primarily through any costs they might incur to manage high risk ballast water. Vessel operators may also face administrative costs to complete pre-arrival reporting or to apply for an exemption if their ballast water is low risk and they choose to do so.

The majority of domestic voyages are low biosecurity risk.¹⁵ When a voyage is low risk, it is expected that a vessel operator will apply for an exemption under the proposed biosecurity legislation, allowing the vessel to discharge ballast water in Australian seas. It is expected that an application for an exemption will be an online form that will rely on information already gathered or known by the vessel operator (i.e. locations of ballast water uptake and intended discharge). (Note: operational details are still being confirmed).

¹⁵ Centre for International Economics 2007, *Ballast water management: A regulation impact statement*, March, Canberra.

Where a voyage is high risk, vessels will be required to manage this risk, for example, through ballast water exchange outside 12 nautical miles from the shoreline. Vessels exchanging ballast water face time and pumping costs. The average cost per vessel depends on the vessel's ballast water capacity and pumping capacity. It is assumed that any vessels crossing 12 nautical miles will choose to exchange their ballast water while outside 12 nautical miles en route, as this will be the most efficient way. Vessels not crossing 12 nautical miles will need to deviate from their route and so will incur additional costs for this extra time as well as the additional costs whilst performing the exchange.

Overall, the compliance cost to industry is just over \$1.2 million a year, averaged over 10 years (Table 6).

Table 6 Average annual compliance costs for businesses

	Current legislation	Proposed legislation	Net cost of proposed legislation
Cost type	\$	\$	\$
Administrative	1 115	25 707	24 592
Substantive compliance	31 547	1 281 032	1 249 485
Total average annual compliance costs	32 662	1 306 739	1 274 077

Note: Under the proposed biosecurity legislation, all vessels travelling domestically must manage their ballast water. Costs are based on the ballast water capacity and pumping capacity of an average vessel in the Australian trading fleet and the number of low and high risk domestic voyages made by Australian-owned vessels. Time costs are estimated using average shipping charter rates. Additional costs for vessels not travelling outside 12 nautical miles were based on average route deviation¹⁶. Costs have been averaged over ten years.

Data source: Department statistics; Australian Maritime Safety Authority data 2012; Centre for International Economics 2007, Ballast water management: A regulation impact statement; industry data.

¹⁶ *Ibid.*

Ballast water overall compliance costs

Under the proposed biosecurity legislation, the compliance cost burden on industry is estimated to increase by just over \$1.2 million a year, averaged over 10 years. This is primarily through increased regulation to manage the biosecurity risk associated with domestic vessel movements. There is likely to be no additional compliance costs for those businesses with vessels making international arrivals, as the current legislation already provides for the management of this biosecurity risk.

Regulatory benefit of ballast water

The proposed biosecurity legislation allows better management of the biosecurity risk associated with ballast water by recognising that invasive marine pests can travel in both international and domestic ballast water sources. While businesses will have increased compliance costs under the proposed biosecurity legislation (primarily because all domestic vessel movements will be covered) the scheme has been designed to be less intrusive for business than immediately implementing the Convention and allows for the greater amount of flexibility in the management of ballast water risks. This allows a business to choose the most cost-effective option to suit their business structure, while still managing their biosecurity risks to an acceptable level.

Inspector-General of Biosecurity

Nature of the problem

The operation of Australia's biosecurity systems require that some powers be exercised that have considerable influence over trade and domestic industry. The extent of these powers mean that an independent review process is needed to maintain, improve and demonstrate the integrity of the biosecurity system. The role of the Inspector-General of Biosecurity is to review the biosecurity activities undertaken by the department. This does not include the activities undertaken by industry participants.

Several recent reviews and inquiries have highlighted the importance of undertaking independent audits of the department's biosecurity activities and risk management in order to maintain or improve the integrity of the biosecurity system as a whole.¹⁷ As part of its preliminary response to the most recent review, the position of the Interim Inspector-General of Biosecurity was established as an interim arrangement with the expectation that enabling legislation would follow. Without this legislation, the position of the Interim Inspector-General lacks some powers required to conduct effective reviews of the biosecurity system.

Why the change is being proposed?

Currently, reviews of the biosecurity system are managed administratively through the Interim Inspector-General of Biosecurity. However, the current administrative arrangements cannot provide the Interim Inspector-General of Biosecurity with the power to compel compliance with requests for information or access to premises. These powers are needed to accurately assess the department's biosecurity risk activities and processes. While the Interim Inspector-General of Biosecurity currently experiences high levels of compliance with such requests, enforcement options are necessary to ensure that relevant information can be gathered if information sources are limited, the review is into an urgent biosecurity risk pathway or if the review is time sensitive.

The proposed biosecurity legislation will establish the Inspector-General of Biosecurity as an independent auditor and reviewer of the department's biosecurity activities and processes. The Inspector-General of Biosecurity will have the power to compel persons to provide particular information or access to particular premises to assist with a review.

¹⁷ Beale et al. 2008, *One biosecurity*; Senate Standing Committee on Rural and Regional Affairs and Transport 2006, *The administration by the Department of Agriculture, Fisheries and Forestry of the citrus canker outbreak*; the Hon. Ian Callinan AC 2008, *Report of the Equine Influenza Inquiry*

Options to address the problem

Option 1: maintain the status quo

Continuing with the current administrative arrangements would maintain the role of the Interim Inspector-General of Biosecurity, which has already provided constructive recommendations to improve Australia's biosecurity systems.

If there were no legislation and the Interim Inspector-General of Biosecurity were to continue administratively, this would restrict the powers available to the Interim Inspector-General of Biosecurity when conducting a review. The Interim Inspector-General of Biosecurity can currently request that a person provide particular information or request access to specified premises to assist with a review. If a person declines to cooperate, the Interim Inspector-General of Biosecurity does not have powers available to compel them to do so. This means that if there is a particular biosecurity risk of concern with limited options to collect critical information about the systems in place to manage that risk, the Interim Inspector-General of Biosecurity would be unable to accurately assess the risk and make recommendations for future risk management.

This option is not preferred as it does not provide the Interim Inspector-General of Biosecurity with all of the powers that may be required to gather information and accurately assess the department's biosecurity risk activities and processes.

Option 2: adopt the proposed biosecurity legislation

Establishing the role of the Inspector-General of Biosecurity through legislation would ensure that there is a statutory officeholder responsible for the independent audit, review and assessment of the department's biosecurity activities and processes. The role and function of the Inspector-General of Biosecurity would align with the Beale Review's recommendation that an effective risk management system should include formal auditing activities.

The Inspector-General of Biosecurity would be able to gather information in situations where a person has not complied with a request for particular information or allowed access to particular premises, with the power to compel persons to provide information relevant to a review or to use warrants to access premises for the purpose of conducting a review. (Note: The Inspector-General of Biosecurity will only audit or review the activities of the department, not industry participants.)

The Inspector-General of Biosecurity would be appointed as a statutory officeholder with an office staffed by the department, reporting directly to the Minister of Agriculture. The Inspector-General of Biosecurity would additionally take on the responsibilities of the Import Risk Analysis Appeals Panel, and would review the process of an individual import risk analysis where required and requested by a stakeholder who believes they have been adversely affected by the outcome.

This option is preferred, as it would help assure stakeholders and Australia's trading partners of the integrity of the department's processes and provide an independent, systematic approach towards maintaining and improving the biosecurity system.

Compliance cost for business

Under the current legislation, the Interim Inspector-General of Biosecurity is responsible for the review of the department's biosecurity activities. In order to achieve this, on some occasions the Interim Inspector-General of Biosecurity may need to inspect particular facilities to see how the department's biosecurity activities work in conjunction with Commonwealth-industry partnerships. (For example, businesses with quarantine approved premises or compliance agreements). However, the Interim Inspector-General of Biosecurity cannot currently compel businesses to provide information to assist with a review or enter premises without consent.

Under the proposed biosecurity legislation, the Interim Inspector-General of Biosecurity will be replaced by the Inspector-General of Biosecurity, a statutory body or office holder with the same primary function of reviewing the department's biosecurity activities. When conducting reviews or audits into these activities, the Inspector-General of Biosecurity may request documents from or inspect the facilities of industry members. If a business refuses, the Inspector-General of Biosecurity would have the power to compel them to comply. This includes, but is not limited to, businesses with approved arrangements and other persons where the Inspector-General of Biosecurity has reason to believe that the person has information relevant to a review (and are capable of giving evidence).

It is anticipated that most businesses will comply with a request, as they understand the importance of biosecurity risk management (this is currently the case). If a business does not wish to comply with a request, the Inspector-General of Biosecurity would first examine other alternatives and only compel a business to comply in particular circumstances where there are limited options available to gather the information. This is examined further in Box 5.

Box 5: Review by the Inspector-General of Biosecurity

Identified cases of the spread of 'citrus canker', a disease causing serious harm to plants and damage to fruit, has multiplied significantly in New Zealand within a month. Hearing the news, the Agriculture Minister directs the Inspector-General of Biosecurity to include as a priority in his review program a review of certain identified entry pathways for the disease, now considered to be of high biosecurity risk to Australia. While speaking to biosecurity officers from the department, the Inspector-General of Biosecurity has been made aware that particular used fruit handling machines imported from overseas are an entry pathway for the disease.

Sarah is the owner of a business operating under an approved arrangement. The Inspector-General of Biosecurity identifies Sarah's business as one of the few undertaking fruit handling via these particular used and imported fruit machines—the business premises are a warehouse where the fruit handling machines are housed.

The Inspector-General of Biosecurity requests access to the premises in a letter to Sarah, explaining that he'd like to visit her business for the purposes of a general review into citrus canker pathways, rather than monitoring her individual business or her employees. Sarah denies the request.

Given the importance of the biosecurity risk posed by the citrus canker and the limited access to businesses which use the identified machines, the Inspector-General of Biosecurity applies for a warrant to gain access Sarah's business premises. On arrival, the Inspector-General of Biosecurity requests to look at the fruit handling machines, and when asks Sarah whether he can take a look at the risk management processes for the machines. Sarah takes him to her office in the same building, as all the information and plans are located on her office computer. The Inspector-General of Biosecurity asks Sarah some further questions about the machines, and to help him transfer the information from her computer to a data storage device he provides her, which she does.

The Inspector-General of Biosecurity ensures that the information contained on the data storage device is kept confidential and not released to the public, as Sarah's competitors may use the information for their own practices and affect her business takings.

The Inspector-General of Biosecurity assesses the information he received from Sarah and needs to ask some further questions in order to finalise the review. He requests that Sarah appear before him in 14 days' time, and asks her the additional questions.

The Inspector-General of Biosecurity uses the information gathered from visiting Sarah's business and answers to the additional questions in his final report, making sure he does not use the confidential information. The information forms part of the Inspector-General of Biosecurity's recommendation to the Minister of Agriculture on improvements that could be made to the fruit handling process, to further limit the risk of citrus canker entry in Australia.

Inspector-General of Biosecurity overall compliance costs

The primary difference under the proposed biosecurity legislation is that the Inspector-General of Biosecurity will have the power to compel businesses to provide information and can seek a warrant to enter premises without permission. The number of businesses that will be affected will ultimately depend on the Inspector-General of Biosecurity's work program. The majority of information will continue to be provided by the department's internal data systems, so it is expected that the cost to business will be limited.

From 2009 to 2014, the Interim Inspector-General of Biosecurity conducted five audits a year on average and four businesses were inspected per audit on average. Typically, the Interim Inspector-General of Biosecurity takes four hours to inspect a premise and gather relevant information. A staff member from the business will accompany the Interim Inspector-General at all times and assist in accessing particular areas or equipment.

Under the proposed biosecurity legislation, the number of businesses that the Inspector-General of Biosecurity will request or require a similar number of businesses to provide information will depend on the work program. For illustration purposes it is estimated that a similar number to be inspected. There is a small additional cost to industry of \$3 861 a year, averaged over ten years (Table 7).

Table 7 Average annual compliance costs for business – Inspector-General of Biosecurity

	Current legislation	Proposed legislation	Net cost under proposed legislation
Cost type	\$	\$	\$
Administrative	0	3 861	3 861
Substantive compliance	3 861	3 861	0
Total average annual compliance costs	3 861	7 722	3 861

Note: From 2009 to 2014 the Interim Inspector-General of Biosecurity conducted five audits a year on average, with an average of four businesses inspected per audit. Under the proposed Biosecurity legislation, a similar number of businesses may be required to provide information and a similar number to be inspected. Costs have been averaged over ten years.

Data source: Department statistics

Regulatory benefit of the Inspector-General of Biosecurity

The proposed biosecurity legislation helps to maintain the integrity of Australia's biosecurity system by enacting the Inspector-General of Biosecurity as a statutory position. There is likely to be a small additional compliance cost to business, which will vary according to the Inspector-General of Biosecurity's work program. However, there will be greater benefits to businesses and the community from improving Australia's biosecurity systems through the provision of independent means to maintain, improve and demonstrate the integrity of the system. A demonstrably independent audit and review process will become more important as Australia's biosecurity operating environment becomes increasingly complex, increasing the need to ensure consistent, systematic processes for oversight and continual improvement.

First points of entry

The nature of the problem

The Quarantine Act currently requires vessels and aircraft that enter Australian territory from overseas to arrive at a port or landing place that is a first port of entry. Under section 13, the Governor-General has the power to proclaim a port (including sea ports and airports) to be a first port of entry, and may place conditions or restrictions on that approval (for example, a port may be limited to receiving a specific class of goods, vessels or aircraft). The first points of entry scheme is designed to ensure that when vessels and aircraft enter Australia, they arrive at ports and landing places that have the appropriate facilities and personnel available to assess and manage any biosecurity risks associated with them.

Currently first ports of entry are listed in the *Quarantine Proclamation 1998*, *Quarantine (Cocos Islands) Proclamation 2004* and the *Quarantine (Christmas Island) Proclamation 2004*. However, there is no transparent process in the Quarantine Act setting out new port or landing places to be proclaimed, or any requirements (including associated infrastructure requirements) that the port or landing place must meet to be proclaimed.

Likewise, there is no clear mechanism to remove a first port status even if the level of biosecurity risk is not being adequately managed, a condition of approval has been contravened or the first port of entry has been decommissioned. There are some proclaimed first ports of entry that are no longer operational and not in use at all. This means that vessels and aircraft could potentially enter Australia through first ports of entry that do not have the infrastructure or personnel available and/or are not properly maintained for adequate assessment and management of their biosecurity risks.

As a result of investment and business needs, aircraft and vessels may wish to apply to the Agriculture Minister for permission under section 20AA of the Quarantine Act to enter a landing place or port that is not a first port of entry. (Permission to land a good can also be sought under section 20DD of the Quarantine Act). If given, this permission is only valid for a specified entry and may be given subject to conditions. This means that some businesses that have an ongoing need to enter a non-first port of entry (non-proclaimed port of entry) must make multiple one-off applications in a given year. This imposes an administrative cost on these aircraft and vessel operators.

Why the change is being proposed?

The proposed biosecurity legislation replaces the term 'first port of entry' with 'first point of entry'. As with the original term, 'first point of entry' includes both sea ports and landing places (airports).

The proposed biosecurity legislation will clearly state the process for becoming a first point of entry, by specifying the requirements that must be met in order for a port or landing place to be determined (for example, managing biosecurity risks to an acceptable level). This provides clarity for ports and landing places that wish to be declared as a first point of entry.

The proposed biosecurity legislation will also clarify the circumstances in which a first point status may be varied or revoked (for example, if biosecurity risks are not being managed, a condition of approval is not being met, or the first point is no longer in use). This ensures that first point of entry operators are aware of what is required to maintain this status over time and the circumstances in which it may be revoked.

The vessel or aircraft intending to enter a non-proclaimed port of entry will still be required to receive permission before entry, similar to section 20AA of the Quarantine Act. However a standing permission may be given to allow multiple entries over a specified period of time, rather than a separate permission for each entry.

Options to address the problems

Option 1: maintain the status quo

Under the Quarantine Act, there is no clear articulation of how ports or landing places may meet the Commonwealth requirements to be designated a first port of entry. This creates uncertainty for port operators, who are unable to make an accurate assessment of whether the costs and benefits of seeking first port status are worthwhile without directly consulting the department.

Further, there is no clear mechanism in the Quarantine Act to remove a first port's status if the level of biosecurity risk is not being adequately managed or a restriction or condition of approval is not being complied with. Under the current legislation, an aircraft or vessel intending to enter a non-proclaimed port of entry must request permission each time it wishes to enter the port or landing place. This can be time consuming and costly if the aircraft or vessel frequently uses a port or landing place and must apply for permission for every arrival.

Continuing the current legislation would lead to the continuation of these problems and therefore is not the preferred option.

Option 2: adopt the proposed biosecurity legislation

Under the proposed biosecurity legislation, the Director of Biosecurity or the Director of Human Biosecurity (the Commonwealth Chief Medical Officer) (the relevant Director) can determine a first point of entry, if satisfied that the level of biosecurity risk associated with the port or landing place is acceptable and the requirements specified in the regulations are met. This will ensure that a first point of entry has the facilities available to manage biosecurity risk at an acceptable level. A first point of entry can be determined subject to conditions, (for example a first point of entry may only be authorised to receive timber).

Setting out the requirements to be determined a first point of entry in legislation and regulations provides a transparent framework and an accountable decision making process. It clarifies the requirements for port operators to be determined a first point of entry and the requirements to maintain this status over time. It will also ensure port operators are aware of the circumstances under which a first point of entry status may be revoked.

The proposed biosecurity legislation will also allow the relevant Director to suspend or revoke a first point of entry determination in specified circumstances, such as the level of biosecurity risk not being adequately managed, a condition of approval has been contravened, a requirement in the regulations is no longer being met or the port or landing place is no longer operational.

Vessels and aircraft may seek permission from the relevant Director to arrive at a port or landing place that is not a first point of entry, or to unload cargo at a port or landing place not determined to receive those goods. Instead of requiring permission for each entry however, the relevant Director may grant the applicant a standing permission which will be valid for multiple entries over a specified period of time.

Compliance costs on business

Currently under the Quarantine Act, the process for a port or landing place to be proclaimed is unclear, as are any requirements (including associated infrastructure requirements) that must be met by a port or landing place in order to be proclaimed. The proposed biosecurity legislation will clarify the process to be determined for a first port of entry, which is not expected to significantly increase or decrease the compliance costs for business. Instead it will give certainty to port and landing place operators who wish to become a first port of entry about what will be required.

The proposed biosecurity legislation and regulations will also clarify the requirements to be determined a first point of entry (and to keep that status). These requirements could potentially impose an additional cost for businesses that operate at an existing port or landing place and wish to continue operating under the first points of entry scheme. However, this will depend upon a number of factors, such as the type of approval being sought and the existing infrastructure at the first point that allows biosecurity risk to be managed appropriately. First points that wish to retain their existing status (i.e. not receive new types of aircraft, vessels, or goods) and already have the infrastructure in place to manage the biosecurity risks are not expected to be subjected to additional costs.

The proposed biosecurity legislation will also allow an aircraft or vessel that wishes to enter Australia at a non-proclaimed port of entry to apply for a standing permission, which allows multiple entries over a specified period of time. This will decrease the compliance burden of businesses that previously were required to seek permission for each entry.

Benefits and costs to business: Determination of a first point of entry

Under the Quarantine Act, the department considers each first port of entry proposal, and the biosecurity risks posed, on a case by case basis. It then makes a recommendation to the Governor-General, who can proclaim the port to be a first port of entry.

There are no requirements in the Quarantine Act that a port must meet in order to be proclaimed. Administratively, when considering a first port of entry proposal, the department takes into account the types of aircraft, vessels or goods that would arrive at the port or landing place, the volume or traffic, the potential biosecurity risk posed, as well as the location of the port or landing place and available facilities.

Under the proposed biosecurity legislation, the department will still take into account the above when considering a first point of entry proposal. However, these requirements will be clearly outlined in the legislation and regulations. Under the proposal, businesses may be affected in one of three ways. Businesses may:

- transition to a first point of entry
- decide not to retain first point of entry status
- become a first point of entry (for the first time).

The first point of entry requirements specified in the proposed biosecurity legislation must be met by businesses transitioning from a first port of entry to a first point of entry, and by businesses becoming a first point of entry (for the first time). There would be a cost to businesses operating at a port or landing place that wish to be determined as a first point of entry. These include: the time costs associated with providing information to the department, including information on the port's or landing place's facilities, risk management processes, record keeping practices, the products being imported and so on.

To be determined as a first point of entry a business will need to demonstrate that it can manage the biosecurity risks associated with its operations. This may be done through submitting detailed documentation and/or hosting inspections of the port or landing place. It is expected that businesses would incur a cost to undertake activities to compile evidence demonstrating their capabilities. Where possible, the intention is to mitigate these costs by building upon or using existing information already provided to other regulatory agencies such as the Department of Immigration and Border Protection.

Under the proposed biosecurity legislation there are also likely to be some businesses that choose not to transition from a first port of entry to a first point of entry. For instance, a business may decide that there is no benefit in maintaining a first point of entry status after comparing the potential cost of upgrading facilities to the expected benefit it would receive if a first point status were to be maintained. This is more likely to occur in smaller or more remote ports.

Benefits to businesses transitioning to a first point of entry

It is anticipated that the majority of proclaimed ports will seek to be determined as a first point of entry under the proposed biosecurity legislation because of the commercial advantage that can be gained. It is expected that most will incur a one-off administrative cost to complete paperwork that demonstrates the port or landing place's capacity to manage biosecurity risk to the relevant Director's satisfaction.

Where a business cannot demonstrate it has the capacity or facilities to adequately manage biosecurity risk, it may need to upgrade. Upgrades may include biosecurity waste management and/or inspection facilities for biosecurity officers. However, businesses will be able to choose the way in which to manage biosecurity risk that is best suited to their business structure. For example, if a business does not have adequate waste management facilities it may choose to install an on-site facility, transport the waste off-site in an approved manner or use a third party contract to manage the waste. The management activities required by the port or landing place to manage risk depends upon a range of factors such as its size, environs, the type of operations and the type of goods, vessels, aircraft and people it is allowed to receive.

Most first ports of entry will already have the appropriate facilities to allow biosecurity risk to be assessed and managed under the proposed biosecurity legislation. Large and busy ports or landing places in particular are likely to have maintained their biosecurity management facilities to the required level, as these facilities are in constant use and receive a commercial advantage from being a first port of entry.

Similarly, in circumstances where a port or landing place approval is limited to receiving specific goods, vessels or aircraft, the port operators are likely to seek a continuation of their restricted first point status under the proposed legislation, unless they see a commercial advantage to seeking a broader approval. The majority of these ports and landing places will already have the facilities in place to manage the biosecurity risks associated with these specified goods, vessels or aircraft.

Under the proposed biosecurity legislation there is a small additional cost to transitioning businesses, as businesses will incur some administration costs. However, the cost is low – estimated at a total of \$1 991 a year averaged over 10 years (Table 8). Costs may be higher for a very small number of particular ports that need to upgrade their facilities. However, these businesses will be able to upgrade in a way that best suits their existing business arrangements while achieving the department’s goals of biosecurity risk management. It is not possible to estimate these costs as these costs are business specific and will depend on a range of variables. The businesses will choose the option that makes the most commercial sense for them.

Table 8 Average annual compliance costs for existing businesses transitioning to first points of entry

	Current legislation	Proposed legislation	Net cost of proposed legislation
Cost type	\$	\$	\$
Administrative	0	1 991	1 991
Substantive compliance	0	0	0
Total average annual compliance costs	0	1 991	1 991

Note: It is anticipated 55 ports (including sea ports and airports) currently operating as a first port of entry are likely to choose to transition to a first point of entry under the proposed biosecurity legislation (based on departmental data). Under the proposed legislation, there will be a delay in when the costs are realised because businesses will

be able to transition to first points of entry over a three year period following the Act's commencement. Costs have been averaged over ten years and do not include this delay. Data source: Department statistics

Businesses not transitioning to a first point of entry

Under the proposed biosecurity legislation, the department would be able to vary or revoke a port or landing place's first point of entry status. These provisions are only expected to impact upon ports or landing places that no longer receive a substantive volume of international vessels (for a variety of reasons) or are no longer operational. If a first point of entry status is revoked, this would mean that the port or landing place would no longer be able to receive international vessels or aircraft when they arrive in Australia (unless they receive permission from the relevant Director).

The costs for those ports and landing places that choose to not seek first point of entry status under the proposed biosecurity legislation would be the loss of any profitable activities forgone. These costs will vary considerably. However, the port and landing places most likely to have their first point status withdrawn are expected to be those that are currently not being utilised and that will not receive a significant commercial advantage from maintaining a first point status.

Businesses that rely on the use of a particular port or landing place that does not continue on as a first point of entry under the proposed biosecurity legislation, may incur additional costs associated with using a different port or landing place to receive goods. The extent to which this occurs will depend on which ports and landing places no longer continue as first points of entry, and which businesses rely on them. As noted above, the ports and landing places that are most likely not to continue as a first point of entry are those which currently have limited or no use and provide a narrow range of services. It may be that some businesses still rely on these ports or landing places because of their remoteness to other first points of entry (that is, the next nearest port is a substantive distance away). However, these businesses still have the option to seek permission to enter a port or landing place that is not a first point of entry. The process to do this would also be improved under the proposed biosecurity legislation.

Benefits to businesses becoming a new first point of entry

The changes under the proposed biosecurity legislation may result in some new ports and landing places seeking to become a first point of entry. However general consultation undertaken in 2012 did not indicate whether any ports or landing places would seek to become a first point of entry. Under both the current and proposed biosecurity legislation, ports and landing places will need to provide the department with information about how biosecurity risks will be assessed and managed and how the requirements in the regulations will be met. This includes information about facilities, risk management processes, record keeping practices, the products being imported, what they are made of, country of origin and so on. Under the Quarantine Act this information was provided as part of the department's administrative requirements. The main difference in the proposed biosecurity legislation is that the requirements will be clearly articulated in the legislation and the regulations. As a result, the costs for business are not expected to change significantly under the proposed biosecurity legislation.

It is possible that some administrative costs to businesses seeking to proclaim a port or landing place will be reduced under the proposed biosecurity legislation because of the improved transparency of the process. For example, reduced time spent seeking clarification of the requirements.

Benefits and costs to business: Vessels arriving at a non-proclaimed port

Investment and business needs (such as a new mine that commences operation) can result in some locations being used intensively over a short period of time, but the closest port or landing place has not been proclaimed as a first port of entry. Under the Quarantine Act an aircraft or vessel must apply for permission each time it wishes to enter a non-proclaimed port or landing place.

This application requires the relevant business to provide information about the locations an aircraft or vessel has visited and intends to visit, the anticipated people and goods on board, the aircraft or vessel's biosecurity risk management processes, and so on. If given, the approval is only valid for a single entry and may be subject to conditions. As a result some locations can be the subject of many one-off applications in a given year. This imposes administrative costs on aircraft and vessel operators. Under section 20D of the Quarantine Act, permission can also be sought to land a good at a port not proclaimed to receive that good (which may also be subject to conditions).

Under the proposed biosecurity legislation, an aircraft or vessel intending to enter a non-proclaimed port is still required to request permission. However, a standing permission may be given to the aircraft or vessel allowing them to enter a landing place or port over a specified period of time. Whether or not an application is approved and the length of the period of time specified will depend on the associated biosecurity risks.

The following example demonstrates the potential benefits to business under the proposed biosecurity legislation (Box 6).

Box 6: Example of a vessel entering a non-first point of entry multiple times

Company C is a liquid natural gas (LNG) company based in Australia. Company C owns a port in Western Australia (Port C) that has a wharf where vessels can be loaded with LNG. Company C wishes to use one of its vessels to transport LNG from Port C to Singapore at an average rate of 10 voyages a year over the next 10 years. However, its vessels cannot enter Port C because it is not proclaimed as a first port of entry, a result of its remoteness and the potential risks posed by other vessels visiting the port.

Under the current legislation, Company C applies for permission to enter a non-first port of entry under section 20AA of the Quarantine Act. The application requires a Company C to collect information to satisfy application requirements, including the locations the vessel has visited, the anticipated people and goods on board, the vessel's biosecurity risk management processes and its record keeping practices. The department undertakes a risk profile based on this information and considers the risk posed by Company C to be low. The department approves Company C's request. Under the Act, Company C must apply for permission each time its vessel enters Port C.

Under the proposed biosecurity legislation, Company C can apply for permission for its vessel to enter Port C over a specified period of time. The application requires a Company C to collect information to satisfy application requirements. This is the same information that would need to be provided for a section 20AA permission above.

The department undertakes a risk profile based on this information and considers the risk posed by Company C to be low. The department grants Company C a standing permission, allowing its vessel to enter the port over a three year period without having to reapply for permission. [Note: the actual period will vary according to the biosecurity risk associated with the port and vessel.]

Under the proposed biosecurity legislation, Company C saves time and money because it no longer has to complete multiple section 20AA application forms. Company C is now better off by \$234 a year, averaged over 10 years (Table 9).

Table 9 Average annual compliance costs to Company C

	Current legislation	Proposed legislation	Net cost of proposed legislation
Cost type	\$	\$	\$
Administrative	241	7	—234
Substantive compliance	0	0	0
Total average annual compliance costs	241	7	—234

Note: Company C intends to use one of its vessels to operate out of a non-first port of entry. Under current legislation, Company C needs to apply for permission each time its vessel needs to enter the port. Under the proposed biosecurity legislation, Company C is better off because it can apply once and have standing permission for its vessel to enter the port for three years. Costs have been averaged over 10 years.

According to department statistics, in 2013 there were 510 applications under the Quarantine Act for 350 vessels who visited a non-proclaimed first port of entry. Of these, there were 30 vessels that had three or more visits (with an average of 4.7 visits each). These businesses are likely to benefit from applying for standing permission under the proposed biosecurity legislation.

There is anticipated to be a savings across businesses of \$3 185 a year, averaged over 10 years (Table 10).

Table 10 Average annual compliance costs for businesses

	Current legislation	Proposed legislation	Net cost of proposed legislation
Cost type	\$	\$	\$
Administrative	12 282	9 097	—3 185
Substantive compliance	0	0	0
Total average annual compliance costs	12 282	9 097	—3 185

Note: In 2013, 320 vessels applied to visit a non-proclaimed first port of entry, with an average of 1.15 visits per vessel. Another 30 vessels had an average of 4.7 visits each to a non-proclaimed first port of entry. These vessels are likely to benefit under the proposed legislation. Costs have been averaged over ten years.

Data source: Department statistics

First point of entry overall compliance costs

Under the proposed biosecurity legislation, the overall compliance cost burden on business is estimated to be negligible (Table 11). The compliance costs of transitioning to a first point of entry are anticipated to be low. There will be some reduced administration costs for businesses that frequently seek permission to enter ports and landing places that are not a first point of entry and as a result, need to make fewer applications.

The cost to some businesses may be higher if they are required to make substantial upgrades to meet regulated first point of entry standards. As discussed above, it is not possible to estimate these costs as these sorts of costs are business specific and will depend on a range of variables. Businesses will choose the option that makes the most commercial sense for them.

Table 11 Average annual compliance costs for existing businesses – first points of entry

	Current legislation	Proposed legislation	Net cost under proposed legislation
Cost type	\$	\$	\$
Administrative	12 282	11 088	—1 194
Substantive compliance	0	0	0
Total average annual compliance costs	12 282	11 088	—1 194

Note: Based on costs of businesses transitioning to first points of entry and using standing permissions under the proposed legislation. There are 55 ports (including sea ports and airports) currently operating as a first port of entry that are expected to transition to a first point of entry under the proposed legislation. In 2013, there were 30 vessels that visited a non-proclaimed port twice or more and that are likely to benefit under the proposed biosecurity legislation. Costs have been averaged over ten years. Data source: Department statistics

Regulatory benefit of first points of entry

The proposed biosecurity legislation will improve biosecurity risk management at the border by making the responsibilities at the border clear and ensuring departmental officers can effectively and efficiently complete operational tasks at proclaimed and non-proclaimed ports. Some businesses are expected to be better off under the proposed biosecurity legislation because of reduced administrative compliance costs, as identified above, associated with aircraft and vessels applying for permission to enter non-proclaimed ports. Other businesses will face some costs to be determined as first points of entry under the proposed biosecurity legislation. It is likely this will be mostly low and administrative, though some businesses may face costs to upgrade their facilities to the required standards. As previously discussed, this will depend on how the business chooses to build risk management into its business as well as a range of factors influencing the biosecurity risk at the port or landing place.

The improved transparency and clarity around the process to be proclaimed a first point of entry should ultimately benefit businesses. While the benefits of improved transparency and certainty are difficult to quantify, they are important for future business and strategic planning. The required investment in facilities for port operators to maintain first point of entry status is an important element in their forward investment planning – understanding what is required to maintain this status allows operators to determine the value of this status compared with the costs associated with maintaining the infrastructure over time. For some ports and landing places, this decision will make business sense, while for others it may not. For all of these decisions, certainty around government decision making helps to reduce risks associated with investment.

One consultation participant (a practising Customs Broker) stated that:

“[Most first points of entry are already] established and should not need a lot of work/cost to meet the new conditions that could be applied. It is more likely to be ‘country’ ports that would require more cost to meet the guidelines and conditions to operate as a first point. Correcting the current approved list and adjusting resources to suit should see cost reductions and thereby allow resources to be better used. Often ports have surplus or under used infrastructure so there should not be a need for a lot of new and expensive infrastructure to be built, rather upgrading what already existing – again a cost savings to port operators and DAFF [now the Department of Agriculture].”

Some businesses may avoid or mitigate the costs involved in transitioning to a first point of entry under the proposed biosecurity legislation by applying for and being granted permission to land at a non-proclaimed port of entry. This will particularly benefit businesses that do not find it cost-effective to become a first point of entry and businesses that use the port.

Summary of overall compliance costs

The proposed biosecurity legislation results in a reduction in compliance costs on business of more than \$6.9 million (Table 12). This is primarily through improved processes for industry partnerships that are better supported by the proposed biosecurity legislation. Overall the proposed biosecurity legislation will help reduce unnecessary regulatory burden on business and improve business productivity whilst ensuring that Australia's biosecurity risk is managed at an appropriate level.

Table 12 Average annual compliance costs for business – proposed legislation

	Current legislation	Proposed legislation	Net cost under proposed legislation
	\$	\$	\$
Approved arrangements	10 009 486	1 810 841	—8 198 645
Ballast water	32 662	1 306 739	1 274 077
Inspector-General of Biosecurity	3 861	7 522	3 661
First points of entry	12 282	11 088	—1 194
Total average annual compliance costs	10 058 291	3 136 190	—6 922 101

Note: Costs have been averaged over ten years.

Regulatory Burden and Cost Offset (RBCO) Estimate Table

Average Annual Compliance Costs (from Business as usual)

Costs (\$m)	Business	Community Organisations	Individuals	Total Cost
Total by Sector	\$ -6 922 101	\$	\$	\$ -6 922 101
Cost offset (\$m)	Business	Community Organisations	Individuals	Total by Source
Agency	\$	\$	\$	\$
Within portfolio	\$	\$	\$	\$
Outside portfolio	\$	\$	\$	\$
Total by Sector	\$	\$	\$	\$

Proposal is cost neutral?	yes	no
Proposal is deregulatory	yes	no
Balance of cost offsets	\$	

Consultation

This RIS is based on the significant and still relevant consultation that occurred for the Ballast Water Management RIS in 2007, the biosecurity legislation development from 2009 to 2012 and the Biosecurity Legislation RIS in 2012, which included further consultation on the ballast water provisions.

From 2012 until August 2013 the department continued to communicate and consult with stakeholders, industry and international trading partners on issues raised during the consultation processes mentioned above. This occurred through: teleconferences, consultative committees, presentations at events, international meetings, and meetings with departmental officials.

Information on stakeholder issues and perspectives was also gathered during the Senate inquiry by Rural and Regional Affairs and Transport Legislation Committee into the Biosecurity Bill 2012 and Inspector-General of Biosecurity Bill 2012.

The Biosecurity Bill 2012 and Inspector-General of Biosecurity Bill 2012 lapsed with the prorogation of the 43rd Parliament on 5 August 2013. Since this time the proposed biosecurity legislation has been a matter for the government to consider and the department has not undertaken further consultation.

During the Biosecurity legislation RIS in 2012 the department received few comments relating to any potential costs of the new legislation on businesses.

This section records the nature of the formal consultation activities and the participants.

Ballast Water Management RIS consultation

A two-phase consultation for the Ballast Water Management RIS was conducted by the department in conjunction with the Centre for International Economics (CIE) in 2007. This two-phase strategy was developed based on feedback from the National Introduced Marine Pests Coordination Group (NIMPCG) that there may be merit in considering key (i.e. NIMPCG) stakeholders' comments prior to the Consultation RIS being released for general public comment.

Phase one

On 15 August 2006 the draft Ballast Water Management RIS was presented by the authors, CIE, to NIMPCG at the groups' 20th meeting, held in Melbourne. Written responses to the draft RIS were received from the stakeholders listed in Table 13. A meeting was held in Sydney on 28 September 2006 to further discuss issues with key industry representatives and Australian Government agencies.

Several cost estimations were recalculated as a result of feedback received from stakeholders, and incorporated into a revised draft Ballast Water Management RIS.

Table 13 Stakeholders who provided written responses to the phase one draft Ballast Water Management RIS, 2006.

Association of Australian Ports and Marine Authorities Incorporated
Australian Maritime Safety Authority
Australian Shipowners Association
Australian Quarantine and Inspection Service
Department of Transport and Regional Services
NSW Department of Primary Industries
NSW Department of Environment and Conservation
Queensland Environment Protection Agency
Tasmanian Department of Primary Industries and Water
Victorian Environment Protection Authority
Western Australian Department of Fisheries

Phase two

The revised draft Ballast Water Management RIS was available for public comment from 24 November 2006 to 22 December 2006. Written responses were received from:

- Pearl Producers Association
- The Association of Australian Ports and Marine Authorities Incorporated
- Australian Shipowners Association
- National Bulk Commodities Group
- Victorian Government
- Australian Conservation Foundation.

Two late submissions were also received.

Most of the comments in the second consultation phase related to estimates of the various costs and benefits. In many cases respondents agreed that the estimated benefits were understated, or related to costs that have little overall impact on total cost. These underestimates are described in the impact analysis of the Business Cost Calculator.

After the end of the phase two consultation, industry stakeholders were in general support of the preferred option 2, sub-option 3, with a strong desire for regulation, in whatever form it takes, to be nationally consistent.

Biosecurity Legislation and RIS consultation

Consultation on policies surrounding the biosecurity legislation was initially undertaken in 2008 as part of the Beale Review on Australia's quarantine and biosecurity systems.

The draft Biosecurity Legislation

The department began consultation on the new legislation in 2009. During the development process, the department consulted with industry representatives from the cargo, shipping, ports, supply chain and logistics, airline, airport, customs, environment, animal, plant, invasive species, primary production and petroleum/exploration sectors through working groups, primarily the Industry Legislation Working Group.

There were 13 industry working group meetings held from April 2009 to July 2012. In May 2012, the draft 2012 Biosecurity Legislation RIS was provided to the Industry Legislation Working Group for consideration.

Table 14 Members of the Industry Legislation Working Group

Animal Health Australia
AQIS Industry Cargo Consultative Committee
Australian Petroleum Production and Exploration Association Limited
Board of Airline Representatives of Australia
Brisbane Airport Corporation
Carnival Australia Conference of Asia Pacific Express Carriers
Customs Brokers and Forwarders Council of Australia Inc
DHL Invasive Species Council
Invasive Animals Cooperative Research Centre
National Farmers Federation
Plant Health Australia
Ports Australia
Qantas Airways
Shipping Australia

Consultation for the Biosecurity Legislation RIS was conducted by PricewaterhouseCoopers (PwC) on behalf of the department.

The department and PwC facilitated an industry roundtable on 8th July, 2011. This provided an opportunity for industries that are likely to be affected by the adoption of the proposed biosecurity legislation. Sixteen industry associations attended (Table 15) and had the opportunity to provide additional information via email after the roundtable.

Table 15 Attendees at the Industry Roundtable, July 2011.

Shipping and Aviation Group

Airports Association

AQIS Industry Cargo

Consultative Committee

Australian Petroleum Production and Exploration Association

Board of Airline Representatives Australia

Carnival Australia Conference of Asia Pacific Express Carriers

Ports Australia

Qantas Airways

Shipping Australia

Industry Legislation Group

Animal Health Australia

AQIS Industry Cargo

Consultative Committee

Custom Brokers and Forwarders Council

Invasive Species Council

Invasive Species CRC

National Farmers Federation

Plant Health Australia

Data and costings obtained through this workshop contributed to the development of the initial RIS.

Following agreement to the draft legislation by the previous government there was a public consultation period from 4 July 2012 until 24 October 2012. This included:

- 11 meetings in all capital cities with state/territory governments and peak industry representatives – approximately 150 people participated
- nine public consultation meetings in capital cities (excluding Darwin) and Newcastle – approximately 200 people attended
- an embassy briefing attended by representatives from 33 governments. International trading partners were also kept informed through the World Trade Organization
- biosecurity legislation website pages – viewed 32 541 times and with over 12 000 visitors to the consultation pages

At the meetings, the department presented an outline of the proposed provisions in the draft Biosecurity Bill and Inspector-General of Biosecurity Bill and PricewaterhouseCoopers, the consultant engaged to develop the RIS, outlined possible impacts of the provisions in the Bills on stakeholders.

The department received 78 submissions from a variety of organisations and industries which were generally supportive of the need for new legislation. Issues raised revolved predominantly around the biosecurity import risk analyses, the inclusion of the Appropriate Level of Protection, the role of the Inspector-General of Biosecurity and the Director of Biosecurity and environmental biosecurity.

It should be noted that the majority of the Biosecurity Bill, including provisions to support border operations such as enforcement and compliance measures, emergencies and human health, received little or no comment or were accepted as drafted.

Few comments related to any potential costs of the new legislation on businesses. Submissions on approved arrangement provisions were supportive as the changes provided opportunities for regulatory burden reduction, decreased overall costs to industry and government and streamlining of systems. With regards to first points of entry one consultation participant stated that: "Often ports have surplus or under used infrastructure so there should not be a need for a lot of new and expensive infrastructure to be built, rather upgrading what already existing."

Consultation in relation to the management of human biosecurity risks and interventions revealed that the impact of these changes will be minor as there will be little practical change to current procedures despite greater clarity and flexibility in the legislation. Further, only a small number of people are likely to be affected as the changes do not affect the list of human disease for which interventions are applied.

A number of written submissions touched on the impact of the proposed biosecurity legislation and the associated cost benefit analysis. In general, the majority of submissions sought additional detail which the subordinate legislation and supporting policy and administrative guidance material is likely to address.

Many stakeholder groups representing diverse perspectives recommended a wide range of proposals they felt would better address the government's aims for biosecurity reform. The department considered all submissions and notes that, as can be expected with most regulatory systems, there are some stakeholders calling for more stringent regulation such as in environmental biosecurity and other stakeholders calling for less stringent regulations such as industry groups from the trading sector.

On introduction, the Biosecurity Bill 2012 and Inspector-General of Biosecurity Bill 2012 were referred to the Senate Rural and Regional Affairs and Transport Legislation Committee for reporting. The Committee held four public hearings in Canberra, Perth, Melbourne and Sydney and published 39 submissions.

The majority of issues raised in the published submissions to the Inquiry were consistent with, or identical to, those provided to the department. Over two-thirds of the submissions were generally supportive of the Biosecurity Bill although the support was qualified by concerns with parts of the legislation, in particular the biosecurity import risk analyses process and the inclusion of the Appropriate Level of Protection.

Consultation with states and territories

Consultation with states and territories occurred throughout the biosecurity legislation drafting process, and during the consultation period following release of the Biosecurity Bill.

Preliminary provisions in the Act include commencement, the objects of the Act, extension of the Act to external territories and concurrent operation with state and territory laws. The Act does not limit concurrent operation of state and territory laws except in relation to the regulation of the importation of goods and ballast water.

The Australian Government will cover the field with respect to importation into Australia and Australian import conditions will be based on the outcomes of a national risk assessment process, taking into account regional differences in pest and disease status. The Australian Government may also choose to prohibit the importation of goods into part of Australia (e.g. particular states or territories), where scientifically justified.

Additional biosecurity measures can be taken at a state level to respond to regional differences in pest and disease status. States and territories will continue to be consulted through a series of workshops to define this policy and through the Intergovernmental Agreement on Biosecurity.

Recommended option

Since the Quarantine Act was first drafted over a century ago, Australia's biosecurity risks have changed significantly. This RIS has identified and considered a range of problems with the Quarantine Act.

This RIS illustrates the anticipated costs and benefits of the proposed biosecurity legislation compared to the current situation, and demonstrate the potential for improved business processes through approved arrangements, better targeting of resources and greater administrative efficiency.

The proposed biosecurity legislation builds on and expands the responsibility for biosecurity risk management, leading to better outcomes for business and Australia's biosecurity risk management. It allows for a better management of the biosecurity risk associated with ballast water by recognising that invasive marine pests can travel in both international and domestic ballast water sources.

The proposed biosecurity legislation maintains the integrity of Australia's biosecurity system by enacting the Inspector-General of Biosecurity. It will improve biosecurity risk management at the border by making the responsibilities at the border clear and ensuring departmental officers can effectively and efficiently complete operational tasks at proclaimed and non-proclaimed ports.

Moreover there is a broad, unquantifiable benefit of the proposed biosecurity legislation from improving the overall quality of the legislative framework for biosecurity, including:

- Reducing the burden on international passengers and trade while remaining responsive to the threat of infectious disease.
- Removing the complex regulatory requirements and administrative practices.
- Being flexible and reflect contemporary industry practice to meet changing demands and provide regulatory certainty to businesses, industry and the government.
- Additional powers for government to monitor and manage biosecurity risks when they are detected.

Furthermore, the proposed biosecurity legislation will allow for better management of the risks of animal and plant pests and diseases entering, establishing and spreading in Australia and potentially causing harm to people, the environment and the economy.

It has been illustrated in this RIS that whilst the overall compliance costs on businesses results in a reduction of more than \$6.9 million, the compliance cost burden on some industry participants is estimated to increase. This is primarily through the increased regulation to manage the biosecurity risk associated with ballast water by domestic vessel movements.

By reducing unnecessary regulatory and administration burden, it is expected that biosecurity resources will be better focused on biosecurity risks that may cause the most harm and therefore the effectiveness of biosecurity risk management. It is expected that the proposed biosecurity legislation will ensure a robust set of powers and mechanisms to protect Australia's unique biosecurity status and environment.

Based on the analysis undertaken in this RIS, the proposed biosecurity legislation is assessed as being the option with the highest net benefit and is the preferred option for government consideration.

Implementation and review

Once adopted, the proposed biosecurity legislation is expected to commence one year after Royal Assent. This delay will provide time for the department to transition between the operations under the Quarantine Act to the proposed biosecurity legislation, which requires a range of implementation and training activities to occur.

Transitional arrangements will apply in some instances, such as for approved arrangements. Upon commencement of the Biosecurity Act, existing QAPs and compliance agreements provisions will remain valid for an 18 month period so that businesses that already have an agreement with the department have time to apply for and transition to an approved arrangement. It is expected that the majority of existing agreements will be transitioned to approved arrangements during the first year following commencement, and all transitions will be finalised within 18 months of commencement. Existing first port of entry provisions will remain valid for a period of three years to allow for the transition of these ports to a first point of entry be transitioned.

The delegated legislation will clarify and provide further information on what is contained in the proposed biosecurity legislation. It is anticipated that delegated legislation will be similar to existing delegated legislation currently sitting underneath the Quarantine Act. The department will work with the Office of the Best Practice Regulation to determine the need for future RISs for the delegated legislation and implementation of the proposed biosecurity legislation.

Appendix A: Minor impacts of adopting the proposed biosecurity legislation

This section qualitatively describes potential changes expected if option three is adopted: proceeding with the proposed biosecurity legislation.

Travel movement restrictions

There is a need for the Commonwealth to act to mitigate the risk of spreading communicable diseases to ensure that Australia complies with its international health obligations.

Under the Quarantine Act, Human Quarantine Officers have limited powers to restrict the movement of people out of Australia when there is an increased threat of communicable diseases.

Under the proposed biosecurity legislation, the Director of Human Biosecurity will be able to restrict people suspected of having a listed human disease from travelling on international passenger aircrafts and vessels. The proposed biosecurity legislation would allow the Director of Human Biosecurity to issue an alert to all border agencies and relevant operators, advising them of the travel restrictions in place. This alert would be used to ensure suspected individuals subject to a traveller movement restriction are not allowed to board an aircraft or vessel.

The new legislation seeks to further implement the International Health Regulations (2005) and provide the Commonwealth Government with powers to prevent, protect against, control and provide a public health response to the international spread of disease.

Impact analysis

The cost of travel movement restrictions is expected to be minimal due to the low expected frequency with which the power is expected to be invoked and the associated impact. While it is difficult to estimate the exact number of times this is likely to be used each year, it might be in the range of around 2-3 times per year on average.

This minor change will affect individuals, as people subject to travel movement restrictions will not be allowed to board an aircraft or vessel. If these individuals are identified at the primary line, they may:

- forfeit some or all of payments made to the airline or vessel and other associated travel costs (e.g. accommodation at destination)
- have their baggage removed from the aircraft or vessel, and have their boarding pass voided.

Importantly, biosecurity interventions would be tailored to accommodate an individual's circumstances (e.g. their health, travel history or future movements), with the ability to escalate to broader responses as information becomes available. For example, an ill passenger could be ordered into isolation, ordered to undergo treatment or vaccination, ordered to stay at home for a period, ordered to report their health status regularly, or simply required to provide accurate contact details.

Management of human remains

Under the *Quarantine Proclamation 1998*, a permit is required to import human remains that are: not accompanied by a death certificate stating the cause of death; not of a high risk nature; or the result of death during transit. Currently, permits require staff input from the Department of Health, the Department of Agriculture, and the Department of Foreign Affairs and Trade.

Under the proposed biosecurity legislation, human remains will generally be permitted to enter Australia without restriction and a permit would no longer be required. Requirements will still apply to specific classes of remains, as specified by the Director of Human Biosecurity. Biosecurity risks associated with individuals who have died in transit will continue to be managed by State or Territory Police and the Coroner.

The proposed changes are not expected to affect the national human biosecurity risks associated with imported human remains. The risks associated with imported human remains are negligible due to the:

- low number of imported human remains each year (it is estimated that approximately 500 human remains are repatriated to Australia each year with less than 250 of these currently requiring an import permit)
- the low likelihood of death from communicable disease of an Australian travelling overseas;
- low global incidence or prevalence of the diseases which present a risk to human health in Australia
- high standards of infection control in Australia, particularly for funeral industry participants which are regulated under occupational, health and safety legislation
- high levels of vaccination, sanitation, hygiene and water safety in most Australian areas
- high standards of health care available in Australia, and the speed and effectiveness of public health action.

Given the negligible level of human biosecurity risk, regulation associated with an ongoing permit system does not represent an efficient use of Australian Government resources. In the unlikely event that there is a communicable disease outbreak in Australia resulting from imported human remains, public health measures are likely to be successful in managing and preventing the spread of most diseases.

Impact analysis

These proposed changes represent a reduction in regulation which will benefit individuals needing to repatriate remains into Australia in two main ways:

1. Removing fees and time cost associated with applying for a permit, which are estimated as follows:

- lodgement of import permit application fee
- assessment of import permit application fee
- average time to fill out the required documentation online (approximately 30 minutes).

2. Reducing the emotional cost incurred by those who may have recently suffered the death of a family member and must spend the time and effort navigating government processes when quite often these processes are not related to biosecurity risk and are unnecessary.

It is noted that extenuating circumstances which alter the above mentioned factors may lead to changes in the human biosecurity risk associated with importing human remains. For example, the import volume and likelihood of death from communicable disease may be increased during wartime; or a large scale outbreak of a communicable disease may occur overseas. In those circumstances, the Australian Government can respond to changes in the human biosecurity risk level by placing import requirements on particular classes of human remains.

Sanctions and offences

The proposed biosecurity legislation has been designed so that the most appropriate sanction for non-compliance can be applied. One major change from the Quarantine Act is the introduction of a civil penalty regime in addition to existing criminal offences, which provides the department with greater opportunity to take action where non-compliance has been identified. Submissions provided as part of the consultation process were generally supportive of the civil penalty regime.

The maximum penalties have been developed to respond to acts of serious non-compliance where significant biosecurity harm is caused to animal, plant or human health. The maximum penalty may not be appropriate in all circumstances and it is a decision for the courts to determine the most appropriate penalty during sentencing.

Additionally, the proposed biosecurity legislation maintains the existence of an infringement notice scheme from the Quarantine Act for high volume, low complexity offences and introduces an enforceable undertaking scheme as an alternative to a civil or criminal penalty.

Abandoned goods

The proposed biosecurity legislation will create a trigger for being able to deem potentially hundreds or thousands of goods as abandoned or forfeited each year. The current requirement to hold goods if an owner cannot be identified takes considerable time and resources for departmental staff to store goods for extended periods of time (sometimes up to three months). For each of the goods, it can take staff a total of a few days in sending letters, providing response periods, and following up.

Covering the field for imports

The proposed biosecurity legislation means that Commonwealth legislation will “cover the field” in respect of the prohibition or restriction of bringing in or importing goods into Australia. This means that the Act will override state or territory laws that relate to bringing in or importing goods to the extent they are inconsistent with Commonwealth laws and that state and territories will not be able to impose measures that are more restrictive than those imposed by the Commonwealth.

The proposed biosecurity legislation provides considerable flexibility. For example, bringing in certain types of goods could be completely prohibited or could be allowed with conditions. Conditions imposed on the import of goods will be based on the outcomes of a national risk assessment process which takes into account regional differences in pest and disease status.

Impact analysis

This clarity in the proposed legislation will increase industry certainty by eliminating any risk of inconsistent requirements imposed by states and territories. States and territories are already restricted, to an extent, from imposing more restrictive conditions as these can place Australia in violation of its international obligations with subsequent risks to trade. However, clarity in the proposed biosecurity legislation removes any doubt. Overall, this is expected to provide a benefit to Australia’s trade relationships without losing the flexibility to accommodate regional differences.

Imported goods

Under the proposed biosecurity legislation goods become subject to biosecurity control automatically as they enter Australian territory, enlivening the powers within the legislation to manage those goods. This means that biosecurity officers can inspect a good and if it is found to pose an unacceptable biosecurity risk it can be treated without first having to order the good into quarantine. This will reduce delays in treating and releasing imported goods that do require intervention, and help those imported goods move through the border faster.

Entity risk

The proposed biosecurity legislation contains a 'fit and proper person' and an 'associates test', which allow a person or company's history of compliance to be considered by the Director of Biosecurity when deciding whether to issue an import permit or allow them to enter into an approved arrangement with the Commonwealth. This addresses the risks created by the current legislation, which has limited powers to address the risk posed by people or companies that have breached the Quarantine Act or other relevant Commonwealth or state and territory legislation. Evidence of entity risk will be required for approved arrangements and may be required for import permits.

Impact analysis

It is expected that businesses will be complete a 'fit and proper person' or an 'associates test' by making a declaration as part of an application form. This is a form businesses will already be required to fill out, and so the proposed biosecurity legislation is likely to pose a negligible additional cost on businesses that import goods or that seek to enter into an approved arrangement. Overall, these tests will benefit Australia by ensuring that particular activities with higher biosecurity risk are being conducted by appropriate persons.

Emergency powers

Under the current legislation, if there is an incursion of national significance the Governor-General can declare an emergency. Once an emergency has been declared, a range of powers become available to the Minister to give directions, take actions, declare a national response agency, delegate powers and declare a temporary quarantine station. The proposed biosecurity legislation will largely contain the same powers.

Impact analysis

These powers are broad-reaching and, if enacted, are likely to have a substantial impact on business, individuals and community and pose additional costs for them. However, the nature of these costs will depend heavily upon the nationally significant disease or pest that led to the emergency declaration, how far it has spread and what actions and measures are necessary to manage it. It is also important to note that these powers are only used in extremely urgent circumstances and have never been used to manage an agricultural-related threat.

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