



Law Council
OF AUSTRALIA

Legal Practice Section

31 May 2019

Department of Agriculture & Water Resources
Resources, Biosecurity Animal Division
GPO Box 858
CANBERRA ACT 2601

By email: pestsmarine@agriculture.gov.au

Dear Sir/Madam

**Australian biofouling management requirements for international vessel arrivals –
Consultation Regulation Impact Statement**

1. This submission has been prepared by the Australian Environment and Planning Law Group of the Law Council's Legal Practice Section (the **AEPLG**)¹. The AEPLG welcomes the opportunity to comment on the above Consultation Regulation Impact Statement (**RIS**).
2. The AEPLG understands that the Department of Agriculture and Water Resources (**Department**) has identified Option 3 as the preferred option and specifically seeks input on the costs, benefits and issues related to that option.
3. Option 3 would require vessels arriving in Australia that are subject to biosecurity control under the *Biosecurity Act 2015* (Cth) to effectively implement biofouling management practices, including the implementation of a Biofouling Management Plan (**BFMP**), a Biofouling Record Book (**BFRB**), and a schedule describing the transition from current practices to mandatory requirements. Pre-arrival reporting requirements would also be imposed.
4. The AEPLG supports the adoption of Option 3 because it would:
 - (a) facilitate a nationally consistent approach to biofouling management while being more cost effective than Option 2 over the short and long-term; and
 - (b) align Australia's management practices with that of the International Maritime Organisation (**IMO**) by the introduction of regulatory measures to implement the IMO's Biofouling Guidelines.
5. Option 3 requires vessels to demonstrate implementation of effective and vessel-specific biofouling management practices. In contrast, Option 2 would entail the introduction of a legislative requirement that vessels must be free of listed species of

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concern. Any additional biofouling management actions would be based on the Department's assessment of the likelihood that a vessel is carrying a species of concern following completion by the vessel of a marine growth risk assessment tool (which the RIS states contributes significantly to the high regulatory burden of Option 2). This is a reactive approach to biofouling management which the AEPLG observes is inconsistent with the precautionary principle, a stated principle of ecological sustainable development in s 3A of the *Environmental Protection Biodiversity Conservation Act 1999* (Cth).

Known Marine Pests

6. The AEPLG recognises that Option 3 is a shift from the species-based approach identified in Option 2 which is no longer considered by the Department to be the preferred approach.
7. Option 2 would require the development and maintenance of a species of concern list that accurately identifies all relevant pest species in all Australian jurisdictions, which the RIS (and 2015 Review) has identified would be both challenging and costly to maintain. The AEPLG notes that such an approach would not take account of pest species whose environmental impact may be unknown.
8. The Biosecurity Act and its regulations do not currently include a list of marine pests of concern. The AEPLG considers that the use of a list of known pest species may assist in achieving the Department's biofouling management objectives and, therefore, the AEPLG sees some benefit in maintaining a list of known pests, particularly as many pests have already been identified by the Department. The Department's website includes a map of marine pests in Australia by jurisdiction and information on identifying and reporting known exotic and established marine pest species. There is also a link to the national biofouling management guidelines for commercial vessels which includes some information on known pest species. The website further provides that the Department is currently updating its National Introduced Marine Pest Information System.
9. The AEPLG suggests that a list of known marine pests could form part of the Australian Biofouling Management Requirements (**ABMR**) which the Department is proposing to publish prior to the mandatory requirements implementation date for Option 3. This approach would alert the international shipping industry to known species of concern and may assist in BFMP development and BFPB compliance.
10. The cost to maintain and update an accurate list of marine pests is an issue that has been raised against the implementation of Option 2. Because there is no statutory requirement for a species list under Option 3 (and the content of the list is not embodied in legislation), the list of marine pests that is available to the international shipping industry as part of the ABMR does not need to be exhaustive. This means that new pest species could be added informally to the ABMR as they are identified (or removed if they are no longer considered a threat in a particular jurisdiction).
11. The availability of a list of known marine pests to industry during the first 5 years of the transition from current practices to mandatory requirements under Option 3 may also be of assistance to BFMP development and/or alternative biofouling risk management practices.

Contact

12. The Law Council would welcome the opportunity to discuss this submission with the Department. In the first instance, please contact AEPLG Chair, Robyn Glindemann on robyn.glindemann@lantegy.com.au

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jonathan Smithers', with a long horizontal line extending to the right.

Jonathan Smithers
Chief Executive Officer