

18 April 2019

Comments on the Biosecurity Levy Steering Committee Discussion Paper

The Invasive Species Council appreciates the opportunity to comment on the discussion paper produced by the Biosecurity Levy Steering Committee that was established by Minister Littleproud in February 2019. Our comments were not specifically sought, but we understand that the committee was to consult widely.

As a community group working for greater protection of Australia's biodiversity through stronger biosecurity (both by advocating policy reforms and by conducting on-ground work and research projects), we strongly support the proposed levy. As acknowledged in the Craik review, environmental biosecurity needs to be accorded a much higher priority and more funding, as noted in the recommendation for the levy (recommendation 34):

*The revenue raised by these mechanisms should be directed to those areas of the national biosecurity system that are currently most underfunded, **with a priority for strengthening environmental biosecurity activities**, national monitoring and surveillance activities, R&I and national communications and awareness activities. [emphasis added]*

Given the regular incursions into Australia of exotic species that harm the natural environment (eg. myrtle rust, red fire ants, yellow crazy ants) – signifying the biosecurity system needs strengthening – it is appropriate and consistent with biosecurity principles that more revenue should be raised from risk-creators.

It is unsurprising that previous consultation with external stakeholders revealed that:

“the process for implementation of the levy has not yielded a consensus as to the appropriate point of imposition, the basis for calculating the tax liability or the collection mechanism.”

A consensus should not be expected. The government should also accept there will continue to be opposition to the levy – proposed levy payers will usually oppose extra costs.

We provide comments here on questions 1–4, 6, 9–10.

For inquiries regarding this submission, please contact Andrew Cox, CEO, on 0438 588 040 (mobile) or andrewcox@invasives.org.au (email).

Responses to discussion paper questions

Question 1. Do you accept the tenor of the above quotes from the Craik Review? If not, please explain clearly why, and what alternative views you endorse.

We strongly endorse the rationale for the levy as outlined in the Craik review. Given the high rate of incursions into Australia with risks for both the natural environment and agriculture, there is clearly a need to generate more resources for strengthening the biosecurity system. It is appropriate that

businesses undertaking the activities generating the greatest degree of risk contribute more to the system.

We note that the terms of reference of the steering committee exclude consideration of the validity of the levy and whether the levy should be charged on other imports. The terms of reference are focused on the levy design for imports arriving by sea. This question therefore appears to be outside the scope of the steering committee's terms of reference.

Question 2. Do you see issues arising from the previous paragraph's recognition that the proposed levy is a tax? How could these issues be addressed? For example, if you consider the Government's proposed revenue target could be met via one or more cost recovery charges, what might they be (given the Constitutional risk to such charges from over-recovery)?

The question of whether the levy is a tax is a legal issue that should be resolved by government and its legal advisors and is outside the scope of the steering committee's terms of reference.

We consider it far less feasible, if not impossible, for the government to raise the proposed revenue through increased direct cost recovery. One reason is that it is not feasible to determine with high levels of certainty the pathways of all biosecurity risks. It is also difficult to determine the biosecurity risks and resulting costs created by imports using a particular pathway and relate this to the activities of each importer. To cover the costs of addressing such biosecurity risks, a simple mechanism to raise revenue, such as the proposed levy, is needed.

Question 3. Do you agree with the points in paragraph 30? Please amplify as appropriate.

We disagree with point 1: A levy does not replace the current system of cost recovery so should not undermine incentives for companies to invest in reducing risks. The levy recognises that the current system does not recover all costs associated with addressing the risks of imports and that it is not feasible to do so, given the pathway uncertainties and unpredictability of many biosecurity risks.

We also note that the private sector is already rewarded for minimising biosecurity risk with faster and less intrusive checking regimes.

We partly disagree with point 2: As noted, we do not believe current cost recovery systems can feasibly recover all costs of addressing risks generated by importing goods. We agree that others contributing to risk such as incoming visitors should also contribute more resources. We endorse the recommendation in the Craik review for an increase in the passenger movement charge. It is entirely justifiable for the levy to target imports, as this source of goods creates a biosecurity risk that internally produced goods do not.

We do not have sufficient information on point 3. Our understanding is that the levy would be a very minor component of the costs of importing goods. Figures are needed to justify the claim that "the competitiveness of some may be severely impaired". However, it remains the case that the levy is

justifiable. The real cost to Australia from the importation of goods should be reflected in their price, and the import levy attempts to partially capture these costs.

At present, all Australians are subsidising the full biosecurity costs of importing overseas goods. It is therefore entirely appropriate for the sector as a whole to contribute more to biosecurity. Given the extremely high costs incurred by Australia due to breaches of the biosecurity system – including environmental costs that cannot be calculated in dollar terms – the contributions of the import sector to the biosecurity system are considerably less than the costs incurred by Australia when new species arrive and establish – the costs of eradications, containment and control and the economic, social and environmental costs. Often, the sources of the most costly incursions – such as myrtle rust and yellow crazy ants, for example – cannot be traced, limiting the potential to assign responsibility and recalculate future risks.

We agree with points 4 and 6, and consider it very important to establish processes to ensure that the levy is directed to the areas of biosecurity as identified in the Craik review. There do need to be transparent processes to ensure that all funds raised by the biosecurity import are spent on biosecurity activities.

We disagree with point 5. It is likely to be appropriate to increase the levy in future as biosecurity risks and costs rise. This is appropriately a matter for Parliament. Given the nature of our political system it seems highly unlikely that the views of the import sector will be ignored.

We note that the terms of reference for the steering committee do not include consideration of the validity of the levy and the allocation of the raised funds. Therefore, this question appears to be outside the scope of the terms of reference.

Question 4. Given the Steering Committee has noted that the Government’s proposed levy is properly regarded as a tax measure (paragraph 28) and the concerns of paragraph 30, do you agree with the proposed recommendations in paragraph 31? Would you qualify or amplify those recommendations; if so please explain?

The national and state governments endorsed the creation of an ‘industry and community reference group’ (by November 2018). This is an appropriate forum for industry input into the biosecurity system. There are also a variety of specific industry-specific consultative channels that provide opportunity for industry input. There is no doubt that the sector should be consulted about decisions affecting their interests. As noted above, the import sector already has ample capacity and opportunities to influence decision-makers, and it would be appropriate for the government to consult directly with relevant stakeholder groups as required.

The import levy should not give those being levied a special right to influence the resulting spending. The risk creators should not have a special right to influence the spending of the biosecurity funding that responds to the risks they create.

There is a general need to improve transparency in the performance of the biosecurity system and the efficiency of levy collection. One model is the New Zealand border clearance levy, about which there are publicly accessible annual reports that include how performance targets are being met. See the report at

<https://www.mpi.govt.nz/dmsdocument/33825-border-clearance-levy-performance-for-the-year-to-30-june-2018> and information about the levy here: <https://www.mpi.govt.nz/news-and-resources/consultations/border-clearance-levy/>

We strongly endorse the second recommendation. The Craik review compiled strong evidence that environmental biosecurity is one underfunded area that should be a high priority for spending funds raised by the levy. We are concerned that the levy will instead mainly go to existing priorities (such as trade priorities) due to them being a higher political priority for the agricultural department. The environmental biosecurity priorities for additional funding should be clearly explicated and relevant indicators developed that are reported on in the proposed budget paper.

As mentioned above, most of these questions are outside the scope of the steering committee's terms of reference.

Question 6. Given that a levy is to be implemented, and that it should relate to “processes of importing that might raise biosecurity risks”, do you agree with its application only to sea freight, as per the Budget announcement? What about its extension to air freight, as recommended by the Craik review, on equity grounds? Should a vessel tonnage levy (as discussed above) be considered? Should such a vessel tonnage levy apply to cruise vessels? Or to vessels more generally, including those arriving in ballast to load exports, or private yachts? Noting the present moratorium on the Passenger Movement Charge, should the levy be extended (in due course) to air and/or sea passengers?

We agree in principle that the levy should apply to as many sources of biosecurity risk as is feasible, so we support the application to air freight, passenger movement and vessels (to the extent that it is feasible). However, it is appropriate that it initially be implemented on sea freight given that it accounts for the majority of biosecurity risks.

Again, this question is outside the scope of the steering committee's terms of reference.

Question 9. Please comment on the extent of industry contribution to the overall biosecurity system from your knowledge and perspective. Please provide specific examples and if possible \$ figures, where this information might not be well understood.

Again, this question is outside the scope of the steering committee's terms of reference.

Contributors to 'the overall biosecurity system' go far beyond the federal government and the private sector. The table in paragraph 71 presents only a subset of financial contributions to biosecurity. Does the 'federal government' contribution include the costs of the federal environment department, including in trying to mitigate the threats of recent incursions? The table does not show the economic, social and environmental costs of responding to and managing failures of the biosecurity system. Contributors also include state, territory and local governments, organisations and individuals on managing incursions and invasive species.

To consider how much the private sector should contribute, we also need to factor in the non-financial costs of species declines and environmental degradation due to new invasive species establishing in Australia. To contribute to this debate about an appropriate level of contribution, it would be useful to estimate the costs associated with recent environmental incursions such as myrtle rust. Such costs – including the endangerment of several plant species by myrtle rust – are likely to far exceed existing industry contributions as outlined in the table in paragraph 71 (depending in part on how the costs of species losses are estimated).

Although the private sector generates most of the risks, it is taxpayers and citizens who pay the majority of costs. It would be appropriate for the private sector to contribute far more than taxpayers.

Question 10. Please provide comments on the appropriateness and extent of biosecurity expenditure programs and general activities that have been identified for funding from the biosecurity levy. Are there any other activities that might be appropriate for funding?

We do not think this is an appropriate question for the steering committee and it is far outside the scope of the steering committee. Such priorities should be informed by the Craik review and transparently determined by the biosecurity agency in consultation with system participants and stakeholders.

ATTACHMENT

Biosecurity Levy Steering Committee

Discussion Paper

A. Aim

1. This discussion paper provides a summary of developments relating to the proposed biosecurity levy and seeks input from potentially affected parties on the impacts, advantages and disadvantages of different levy design and collection options.
2. A number of questions are posed through the paper and an indication given of early thinking by the Steering Committee on some of the contentious issues; final positions have not yet been determined and will be influenced by submissions received and associated consultations.
3. **To meet the Steering Committee's overall deadline, submissions are requested on or before Thursday 18 April.** If you wish to respond but cannot achieve the proposed deadline, please contact the Committee chair to discuss other arrangements.
4. Submissions should be sent electronically to bilreview@yahoo.com

B. Background to the Steering Committee

5. The concept of a levy on incoming sea and air containers was a recommendation of the 2017 independent review of the capacity of Australia's biosecurity system and its underpinning intergovernmental agreement (the Craik Review).¹ The Government announced in the 2018-19 Budget "a levy on imports by sea to invest in a stronger, fit-for-purpose biosecurity system, to commence on 1 July 2019."² The Government stated that the levy, estimated to raise \$325 million over three years, would be:
 - imposed on all containerised and non-containerised cargo imported to Australia by sea, with the exception of military equipment;
 - imposed on stevedores; and
 - set at \$10.02 per incoming twenty-foot equivalent (TEU) sea container and \$1 per tonne for non-containerised cargo.
6. The levy funds would "contribute to onshore surveillance, diagnostic, data analytics, research and adoption of new technology to help us detect, identify and respond to exotic pest and diseases earlier and ensure we can move people and goods into Australia safely and more efficiently."³
7. The Department of Agriculture and Water Resources consulted with affected stakeholders between August 2018 and February 2019 on the design of the legislation. Given a lack of agreement, Pegasus Economics was engaged to gather industry views, identify points of agreement on a way forward and canvass an approach to design and implementation based on views expressed by external stakeholders.⁴ Pegasus concluded that:

¹ W Craik, D Palmer and R Sheldrake (2017), "*Priorities for Australia's Biosecurity System*", <http://www.agriculture.gov.au/SiteCollectionDocuments/biosecurity/partnerships/nbc/priorities-for-aus-bio-system.pdf>

² <http://www.agriculture.gov.au/about/reporting/budget/import-levy>

³ <http://www.agriculture.gov.au/about/reporting/budget/import-levy>

⁴ Pegasus Economics (2019), "*Report on the Biosecurity Imports Levy*", March 2019.

“the process for implementation of the levy has not yielded a consensus as to the appropriate point of imposition, the basis for calculating the tax liability or the collection mechanism.”⁵

8. On 24 February 2019, having received the draft Pegasus Report, the Minister for Agriculture and Water Resources, Hon David Littleproud, stated that the Government had:

“heard concerns of importers around various levy designs the Department of Agriculture and Water Resources has presented during consultation on this levy. Consequently I am establishing an industry steering committee so industry itself can help design the levy.”⁶

9. On 5 March, the Minister announced members of the Steering Committee and its terms of reference. (The full terms of reference are appended to this paper). The terms of reference request the Steering Committee to make recommendations on the possible scope and design for a biosecurity import levy, with specific reference to:

- base;
- rate(s);
- imposition point(s) of financial liability – including but not necessarily limited to ports, importers, shipping lines, customs brokers and stevedores; and
- collection mechanism(s);

having regard to:

- processes of importing that might raise biosecurity risks;
- the outcomes of consultation on the proposed levy to date;
- the inclusion of all containerised and non-containerised cargo transported to Australia by sea, with the exception of military equipment;
- simplicity and predictability for levy payers;
- administrative efficiency and practicality for affected industry and government, and
- the aim of raising an estimated \$325 million (net) over the first three years.

10. The Steering Committee’s recommendations, which are required no later than 1 June 2019, are to be informed by consensus Committee views, with any dissenting views to be clearly set out and attributed.

11. The members of the Steering Committee and their affiliations are:

- David Trebeck, Independent Chair
- Michael Gallacher, Ports Australia
- Rod Nairn, Shipping Australia
- Michael Sousa, Qube Holdings
- Margie Thomson, Cement Industry Federation
- Paul Zalai, Freight and Trade Alliance
- Brian Lovell, Australian Federation of International Forwarders
- Tony Mahar, National Farmers Federation
- Peter Gniel, Australian Institute of Petroleum
- Joel Katz, Cruise Lines International Association, Australasia

12. The authors of the Pegasus report, Roger Fisher and Alistair Davey, are advising the Steering Committee.

⁵ Pegasus Economics (2019), *Op. cit.*, P 17.

⁶ “Statement on Biosecurity”.

C. Purpose of the Levy

13. The Steering Committee recognises the importance of being clear about the purpose of the levy. Not only does this guide subsequent design features, it also underpins whether the levy is perceived as being “legitimate” or just extracting additional revenue from the private sector, especially if government appropriations are not seen to be keeping pace with expenditure requirements.
14. In many respects, the Steering Committee has been formed in response to widespread private sector concerns about the lack of intrinsic fairness of the Budget levy proposal.
15. The biosecurity system is complex, becoming ever more so over time, but it retains three core principles:
 - “the importance of having an integrated biosecurity continuum involving risk assessment and monitoring, surveillance and response, pre-border, at the border and post-border;
 - risk assessment reflecting scientific evidence and rigorous analysis; and
 - shared responsibility between the Commonwealth and State/Territory Governments, and between businesses and the general community.”⁷
16. The Steering Committee notes the statement by the Minister that the revenue generated by the levy is designed to help achieve a stronger overall biosecurity system. In the words of the Craik Review, a levy would be justified if it were “implemented for the purpose of improving environmental biosecurity and national monitoring and surveillance.”⁸
17. The implication is that it will fund additional activities not conducive to direct cost recovery charge funding. It would also help respond to emerging threats from imported pests and diseases, partly related to the expected growth in imports. The corollary is that expenditure enabled by the levy funds should focus on areas where the greatest return from investment might be – logically pre- or at the border.
18. There is widespread concern throughout the import trade sector at present that the biosecurity system is under stress. A current example is the resourcing demands to manage increased inspection associated with the Brown Marmorated Stink Bug threat, and the associated delays in cargo being released. While the Steering Committee is sympathetic to these concerns, the biosecurity levy revenue should principally be directed to broader issues, rather than alleviating immediate concerns like Stink Bug resourcing.

D. Principal Conclusions of the Craik Review

19. The most recent review of the biosecurity system drew the following conclusion:

“Biosecurity risks are increasing due to increased global trade and travel, increased agricultural expansion and intensification, increased urbanisation close to farmlands, and other factors such as climate change. A tight fiscal environment for governments has placed significant pressure on biosecurity budgets and the ongoing capacity of jurisdictions to meet their biosecurity commitments. Biosecurity stakeholders, especially those bearing an increasing share of the costs, want a greater say in decision making about the national system, greater alignment of biosecurity and market access efforts, more efficient delivery of government biosecurity services, and stronger arrangements for environmental biosecurity, among other things”.⁹

⁷ R Beale, J Fairbrother, A Inglis and D Trebeck (2008), “*One Biosecurity: A Working Partnership*”, Independent Review of Australia’s Quarantine and Biosecurity Arrangements; Report to the Australian Government, September, 2008, P xvi.

⁸ W Craik, *et al*, *Op. cit.*, P 121.

⁹ W Craik, *et al*, *Op. cit.*, P 1.

20. The Craik Review also concluded:

“There is widespread support for the view that the national system is currently underfunded and that, in particular, there is inadequate funding for those areas where the greatest return is likely to be achieved. These include prevention activities (pre-border and at the border), education and awareness building, cross-sectoral research and development and environmental biosecurity”.¹⁰

21. The Review recommended that:

“Budget appropriations to all Australian governments for biosecurity must be at least maintained at 2016–17 levels (in real terms) until after the next review of the Intergovernmental Agreement on Biosecurity”.¹¹

22. Further, the Review noted that:

“much of the material of concern to the national biosecurity system, including of environmental concern, arrives via vessels and containers—either in the contents of the container or on the external surfaces of the container itself ... The Panel is of the view that a broad-based levy on containers should be implemented to contribute towards a greater effort on environmental biosecurity and improved national monitoring and surveillance generally. The levy should be extended to non-containerised imports as well”.¹²

23. It also stated that:

“Inbound passengers are a significant source of biosecurity risk. Many are also tourists who come to experience Australia’s unique natural environment and are therefore beneficiaries of our national biosecurity system. If the principles contained in the Intergovernmental Agreement on Biosecurity are applied, then incoming passengers should contribute to the cost of biosecurity services. Using the Passenger Movement Charge to collect a contribution towards the national system would be the most effective and efficient means of doing so”.¹³

Question 1. Do you accept the tenor of the above quotes from the Craik Review? If not, please explain clearly why, and what alternative views you endorse.

E. General Levy vs Cost Recovery Charge

24. The Budget announcement, quoted earlier, promises to use biosecurity levy funds to deliver a number of non-regulatory biosecurity activities, including onshore surveillance, diagnostics, data analytics, research and new technology adoption, and stakeholder communication and engagement.

25. Cost recovery charges not only must relate to the provision of specific services, they must also not “over recover” the relevant cost. The distinction between taxes or levies, on the one hand, and charges or fees, on the other, is summarised in the following statements:

“A generally accepted definition of taxation is:

A compulsory extraction of money by public authority for public purposes, enforceable by law, and ... not a payment for services rendered. (Matthews v Chicory Marketing Board [1938] 60 CLR 263)”

¹⁰ *Ibid.*, P 114.

¹¹ *Ibid.*, P 119.

¹² *Ibid.*, P 120.

¹³ *Ibid.*, P 121.

“A fee-for-service is a direct charge for the provision of a service. The general principles are that: a fee must reflect the costs of the service provided; and the service must be rendered to, or at the request of, the party paying the account. If these principles are not met, then a purported fee-for-service may amount to a tax, and legislation imposing the fee could be open to Constitutional challenge.”

“Under the Constitution, taxes (often described as levies) require explicit and stand-alone legislative backing. Under certain circumstances — for example, where charges are not directly related to the costs of providing a service to a particular user — fees may be subject to challenge as inappropriately amounting to taxation.”¹⁴

26. And:

“Entities need to ensure that costs that cannot be reasonably attributed to a specific individual or organisation are not included in fees. Otherwise, there could be a risk that the fees could be considered taxes for Constitutional purposes.”

“A cost recovery fee is the preferred option where the activity and its costs can be linked to a specific individual or organisation (e.g. an application for a licence).”¹⁵

27. Given that the purpose of the levy is to seek a contribution from the private sector in strengthening “the overall biosecurity system”, and the Constitutional limitations on how a cost recovery charge can be constructed, **the Steering Committee notes that the levy is properly regarded as a tax measure.** This does not preclude the design of the levy relating to areas of principal biosecurity risk.

Question 2. Do you see issues arising from the previous paragraph’s recognition that the proposed levy is a tax? How could these issues be addressed? For example, if you consider the Government’s proposed revenue target could be met via one or more cost recovery charges, what might they be (given the Constitutional risk to such charges from over-recovery)?

F. Private Sector Concerns Regarding the Principle of a Biosecurity Import Levy

28. The private sector is strongly supportive of the importance of a robust biosecurity system, which it acknowledges is presently underfunded. Current priorities, such as high levels of intervention to prevent an incursion of the Brown Marmorated Stink Bug, have highlighted biosecurity resourcing constraints, as well as causing frustrating delays for import container and other cargo clearances.

29. The private sector has also pointed to the considerable investments by individual firms to enhance biosecurity outcomes, especially pre-border.

30. Nevertheless, businesses and organisations harbour a number of concerns regarding a general biosecurity levy, which were highlighted during the Department’s consultation process. These include:

- concern that levy payers may be poorly correlated to biosecurity risk, especially given that private sector investment to reduce risks may be unrecognised or rewarded, thus reducing any incentive to make such investments;

¹⁴ Productivity Commission (2001), *Cost Recovery by Government Agencies*, p 35, xxxiii and xxxvii.

¹⁵ Department of Finance (2014), *Australian Government Cost Recovery Guidelines*, Resource Management Guide, No 304, July 2014, P 37, and P 23 para 54.

- concern that the levy is targeted at private sector businesses who already contribute to biosecurity enhancement, and not the broader public who (for example, incoming visitors) may inadvertently create biosecurity risk;
- concern that the application of a levy on broad-brush criteria may have differing economic impacts on different industry sectors or businesses, to the point where the competitiveness of some may be severely impaired;
- scepticism that collected revenue will be fully allocated for biosecurity purposes, or for additional activities, due to the reluctance of governments to hypothecate the funds (a reality in common with many other similar levies, such as the Medicare levy and rural R&D levies);
- concern that, once established, levy rates could be increased with limited scope for private sector contribution to, let alone capacity to influence, such decisions, resulting in the proportion of total biosecurity costs being met by the private sector rising further over time; and
- concerns that levy revenue, even if appropriated for biosecurity, may not be allocated to the most pressing priorities or ones where the prospective benefits (as determined by a risk reward ratio, or benefit cost assessment) are greatest.

31. The Steering Committee has discussed these concerns and how best they might be offset or minimised within a levy context. Subject to feedback from other interested parties, **the Steering Committee is proposing to recommend:**

- the appointment of a **high-level, expertise-based Biosecurity Advisory Council that will enhance the shared responsibility principle and provide more scope for private sector interests to be involved with and influence important biosecurity decisions, including funding and consideration of relative biosecurity risk;** such a Council was recommended by the Beale review¹⁶; and
- **the production of an annual Biosecurity Budget-related Paper to provide a full reconciliation of funding sources and expenditure programs, current biosecurity priorities, biosecurity risks, and more meaningful indicators on the quality of service provided such as turnaround times on biosecurity inspections;** this was recommended by the Pegasus review.¹⁷

32. A combination of these measures would make it more difficult in practice for biosecurity levy revenue not to be used for biosecurity purposes. It would also provide much-needed transparency on how funds are deployed. And, perhaps most important of all, it would provide a vehicle for constructive private sector engagement on expenditure programs and priorities, and risk assessment, consistent with the “shared responsibility” principle.

Question 3. Do you agree with the points in paragraph 30? Please amplify as appropriate.

Question 4. Given the Steering Committee has noted that the Government’s proposed levy is properly regarded as a tax measure (paragraph 28) and the concerns of paragraph 30, do you agree with the proposed recommendations in paragraph 31? Would you qualify or amplify those recommendations; if so please explain?

¹⁶ R Beale, *et al*, *Op. cit.*, Pp xxiii-xxiv.

¹⁷ Pegasus Economics, *Op. cit.*, P 18.

G. Principles to Guide Levy Imposition and Collection

33. The next step is to review the principles which should guide the imposition and collection of the levy. Following generally accepted practice, the Henry Tax Review outlined the following design principles for the tax-transfer system:
- **Equity;**
 - **Efficiency**, in terms of raising revenue broadly and minimising distortions of individuals' choices, and minimising cascading of administrative costs;
 - **Simplicity**, in terms of ease of understanding and compliance;
 - **Sustainability**, in terms of providing revenue for expenditure programs with flexibility to respond to changing circumstances; and
 - **Policy consistency**, in terms of rules on one part of the tax not conflicting with rules elsewhere.¹⁸
34. In the biosecurity context, equity relates to the perception that all parties are contributing at appropriate (or "fair") levels. There is necessarily a judgement as to what this means in practice. The fact that the specific elements of the Budget proposal have been widely criticised indicates a view that many industry sectors and levy payers believe it is not equitable. The concerns noted earlier that the proposed levy may be poorly correlated to biosecurity risk and that the application of a levy on broad-brush criteria may have differing impacts on different industry sectors, are primarily concerns about equity.
35. **As far as the Steering Committee is concerned, the levy should ideally relate, as closely as practicable, to the biosecurity risks involved.**
36. The problem in giving effect to this objective, further considered below, is that the existing biosecurity architecture does not contain a ready-reference biosecurity risk matrix across all potential vectors or pathways that can inform levy application.
37. One element of efficiency, as perceived by the private sector, is whether the imposition of a levy will require the private sector to develop new IT systems for collection, the cost of which will then need to be recouped via an administration charge. An administration charge, as it flows through to final consumers, could conceivably amount to an additional cost greater than the levy component itself.
38. In response, the Steering Committee considers that:
- **where possible, existing collection mechanisms should be employed;** and
 - **the point of imposition should be as close as possible to the cargo owners/importers who have created the demand for the import, thereby minimising the scope for cascading as costs are passed through the supply chain.**¹⁹
39. One other principle emerges from some of the industry criticism that has been made of the Budget proposal: any biosecurity levy revenue should result in **additional** (not substituted) expenditure or programs. Paragraphs 30 and 31 are relevant to this, with general government resistance to hypothecating revenue being in potential conflict.
40. As the Steering Committee assesses levy options, it will take these principles into account.

¹⁸ K Henry, J Harmer, A Piggott, H Ridout, and G Smith (2009), *Australia's Future Tax System: Report to the Treasurer*, P 17.

¹⁹ Pegasus Economics (2019), *Op. cit.*, P 13.

Question 5. Do you agree with the above principles, especially as they relate to equity and efficiency, as a basis to assess potential levy proposals? Are there any others you consider should be followed?

H. Levy Base

41. The Government's 2018 Budget announcement was reiterated in Section B above: a \$10.02 levy per incoming TEU sea container and \$1 per tonne for non-containerised (bulk and break-bulk) cargo.
42. The recommendation of the Craik Review was: \$10 per TEU for incoming sea containers; \$5 per incoming air container, both effective from 1 July 2019; increasing the Passenger Movement Charge by \$5, effective from 1 July 2022. The Review recommended the extension of the levy to non-containerised incoming trade, noting that "the vessels themselves also create biosecurity risk", although a mechanism, rate or timescale was not specified.²⁰
43. During the consultation period, an alternative option was suggested by the Department in response to feedback: reducing the \$1 per tonne rate for bulk cargo to \$0.50, with a vessel tonnage levy being added to make up the revenue shortfall. Later, a further option was proposed by an industry representative: a zero bulk cargo rate and a higher vessel tonnage levy.
44. The logic behind reducing (or eliminating) the bulk cargo levy is the view that bulk cargoes (such as petroleum products, fertiliser and cement/clinker) pose minimal biosecurity risks.
45. Conversely, the imposition of a vessel tonnage levy widens the levy payer base to shipping companies (who in turn would seek to pass on the cost to their shipper customers), including ships arriving in ballast to load exports, and passenger cruise vessels (where, for market reasons, the levy may not be able to be passed on via passenger ticket prices, or passed on promptly).
46. The Steering Committee will evaluate these and other alternatives, as well as the original Budget proposal, relative to the policy principles previously described. It will also be guided by feedback received from interested parties.
47. The Steering Committee's Terms of Reference note that the levy is to apply to "all containerised and non-containerised cargo transported to Australia by sea (with the exception of military equipment)". A levy on vessels was not specifically mentioned, but can be implied given the way the Department's consultations evolved last year.
48. Air freight is not explicitly mentioned in the Steering Committee's Terms of Reference, despite having formed part of the Craik Review's recommendations²¹. Nor are passengers (air or sea), other vessels (such as private yachts, oil and gas exploration vessels, construction vessels and the like), aircraft, mail²² or e commerce, all of which may present potential biosecurity risks.

²⁰ Wendy Craik, *et al*, *Op. cit.*, P 7, P 120 and P 121.

²¹ The Government has stated that air cargo will be considered at the next review of the levy, scheduled for 2021-22, see <http://www.agriculture.gov.au/biosecurity/aus-gov-biosecurity-priorities/levies-questions-answers>

²² The Government, via the Department, recovers the costs for biosecurity activities on international mail, brought in by Australia Post, through a biosecurity services fee applied under the Biosecurity Regulations, 2016.

49. The Steering Committee notes the current moratorium on changes to the Passenger Movement Charge (which expires in July 2022).
50. It also notes that the Passenger Movement Charge has in the past contained explicit components for biosecurity purposes, such as an \$8 per passenger Foot and Mouth Disease impost in 2001. Over time, specific reasons for several increases in the Passenger Movement Charge have been cited, including for the Sydney Olympic Games, Aviation Security, regional tourism and other purposes.²³ However, as noted above, the Craik Panel considered it is now regarded as “a general revenue impost”.
51. The Steering Committee’s Terms of Reference enable it to have regard to “processes of importing that might raise biosecurity risks”. That phrase would appear to give the Steering Committee licence to discuss other potential import vectors/pathways, apart from sea freight (and its associated vessels), on which a levy might be imposed (even if not immediately).

Question 6. Given that a levy is to be implemented, and that it should relate to “processes of importing that might raise biosecurity risks”, do you agree with its application only to sea freight, as per the Budget announcement? What about its extension to air freight, as recommended by the Craik review, on equity grounds? Should a vessel tonnage levy (as discussed above) be considered? Should such a vessel tonnage levy apply to cruise vessels? Or to vessels more generally, including those arriving in ballast to load exports, or private yachts? Noting the present moratorium on the Passenger Movement Charge, should the levy be extended (in due course) to air and/or sea passengers?

I. Levy Rates and Biosecurity Risk

52. The Pegasus Report estimated that nearly \$50 million of the levy, as initially proposed, would be generated by imports of crude oil and refined petroleum products, and nearly \$40 million from sea containers²⁴. The balance, relatively small in \$ amount, would come from break bulk and other bulk commodities.
53. A partial (or complete) substitution of a vessel tonnage levy for a bulk cargo levy would significantly change the pattern of levy collection. A vessel tonnage levy would affect both vessels importing cargo, and vessels arriving empty (or in ballast) in order to load export cargo. It would also include cruise vessels.
54. Based on approximate categories of ship arrivals and tonnages of ships, the following table provides indicative estimates for vessel arrivals by category, average vessel tonnages and vessel tonnage revenue, assuming the rate of \$0.027/tonne which formed part of a Departmental alternative option flagged late in 2018. These Steering Committee estimates would need to be verified by more accurate data.

²³ Wendy Craik, *et al*, *Op. cit.*, Table 11, P 122.

²⁴ Pegasus Economics (2019), *Op. cit.*, P 6 and P15.

Vessel Category	Numbers of Vessel Arrivals	Average Vessel Tonnage	Levy @ \$0.027/tonne
Bulk Carriers	12,000	65,000	\$21.1m
Tankers	2,000	70,000	\$3.8m
General Cargo	500	12,000	\$0.2m
Vehicles	500	55,000	\$0.7m
Livestock	300	10,000	\$0.1m
Chemical	150	15,000	\$0.1m
Container Ships/RORO	1,750	40,000	\$1.9m
Cruise Ships	350	80,000	\$0.8m
Total	17,750		\$29m

Source: Steering Committee estimates based on industry data.

55. Some members of the Steering Committee see merit in a vessel tonnage levy, given a low biosecurity risk of bulk cargo (such as petroleum products, cement products and fertilisers). Other Steering Committee members are concerned that a vessel tonnage levy would add new parties to the levy collection net (including vessels arriving in ballast to load export cargo), and would ultimately be passed on to cargo owners (with an administration fee added), while its extension to cruise vessels would effectively double up on the Passenger Movement Charge.
56. The Steering Committee has sought information from the Department regarding the biosecurity risk of various vectors, pathways, cargoes and vessels to guide it in recommending levy design. This follows a comment in the Craik report that “more than one-third of the pests and diseases included in the Risk Return Resource Allocation model have containers as a pathway.”²⁵
57. The Department has invested heavily in risk management since the Beale Report recommended it do so. Consistent with normal practice, risk is a combination of likelihood and consequence. The Department’s focus has been mainly on risk assessment of particular pests or diseases. As part of this, a Risk Return Resource Allocation model has been constructed, drawing on inputs from the Centre for Excellence for Biosecurity Risk Analysis. The model describes some 60 entry pathways and 130 pathway-specific biosecurity controls.²⁶
58. In response to the Steering Committee’s request for information to assist a risk-related biosecurity levy design, the Department’s response is qualitative not quantitative or science-based. It knows where existing detections occur, and allocates resources to what it considers the highest risk areas. The levy is designed to fund activities that focus more on the overall system, especially pre- the border, where the prospective return from intervention is greatest.
59. In a 2014 submission, the Department did provide data on identifications of exotic pests and diseases, reproduced in the table below. These figures, while interesting, are of course not the same as an aggregated risk assessment of all pathways and vectors. An accompanying table indicated that detections via vessel hulls, for example, are very low, typically less than 10 per year. Most detections are animals (including insects). The Department noted that in the 2013-14 year, 261,000 items were seized from 17.7 million arriving passengers, and 24,000 mail items were seized from a total of 186 million such items.

²⁵ Wendy Craik, *et al*, *Op. cit.*, P 120.

²⁶ Department of Agriculture and Department of Environment (2014), *Submission to Standing Committee on Environment and Communications References Committee Inquiry into Environmental Biosecurity*, August 2014.

Arrival mode	2009	2010	2011	2012	2013
Air	8,859	10,475	11,215	10,198	11,321
Mail	533	775	636	558	750
Sea	7,455	7,317	6,313	5,272	6,169
Unknown	69	165	132	102	126
Total	16,916	18,732	18,296	16,130	18,393

Source: Department of Agriculture and Department of Environment (2014), *Op. cit.*, P40.

60. Ultimately, there are many permutations and combinations of levy rates and impositions that could be devised to generate a desired revenue target. Settling on a recommended option involves several elements of judgement, for example:

- balancing the relatively low number of empty containers (around 7 percent of the total²⁷), hence relatively modest revenue contribution, with, on the one hand, perceived biosecurity risk, and on the other hand, administrative ease or difficulty of imposing a levy on empty containers; it has been estimated that exempting empty containers from the levy could be offset by increasing the (full) container levy by 12 cents per TEU;
- reduced revenue from bulk imports (such as petroleum, fertiliser and cement) may be justified in terms of biosecurity risk, but the question whether levy revenue from vessels (roughly) matches the biosecurity risk from those vessels needs assessing; the passing on of a vessel tonnage levy (and possible cascading effects) also needs consideration, as does its extension to vessels arriving to load exports and cruise ships;
- air freight might constitute only a small portion of total import volumes (about 2 percent by volume), but is a much higher portion in value terms (hence capacity to pay); one question is whether an effective charging mechanism for air freight exists.

Question 7. Given the information and discussion in Section I, what views do you have about the optimal imposition of a levy, in terms of either: forms of levy, rates, and/or revenue targets by categories of levy payer?

J. Points of Levy Imposition

61. Strong private sector opposition has been expressed to the original proposal to impose the levy on stevedores, given their lack of a direct billing relationships with cargo owners. Accordingly, in response to this business feedback, the Department proposed that the point of imposition be shipping lines. Other possible collection points raised during the consultative process include port authorities, freight forwarders, customs brokers, and/or cargo owners/importers.

62. Potential collection point businesses have pointed to practical difficulties and/or cost implications were they to be involved, including mis-use of market power to over-collect (or difficulty in passing on the additional costs, for those with limited market power), significant

²⁷ For the 2017 calendar year, a total of 3.9 million import TEUs were handled at the five capital city container ports, of which 277,000 (or 7 per cent) were empties. See Bureau of Infrastructure Transport and Regional Economics (2018), *Waterline 62*, October 2018, Table 1.6, P 17.

investments in IT and new systems to enable collection (and then the seeking, via administration charges, to meet this cost), and general cascading effects through to final consumers.²⁸

63. The Department has suggested a new collection mechanism is required, to be developed by firms involved at the point of imposition. Some parties, including some members of the Steering Committee, consider that adequate collection mechanisms collecting similar taxes already exist.
64. In particular, the Department of Home Affairs' Integrated Cargo System collects data from a range of parties, including via the Full Import Declaration (such as the Australian Taxation Office for the GST, the Wine Equalisation Tax, the luxury car tax and some customs duties; the Australian Bureau of Statistics; and the Department of Agriculture and Water Resources itself, for biosecurity assessment and inspection fees).
65. **There is strong support from a wide cross-section of businesses and their organisations for using the Full Import Declaration. It has the advantage of being an existing collection system to which minimal change would be required to make it fit-for-purpose, the levy would be imposed directly on importers, thus minimising cascading effects, and it would eliminate additional management, administration or third party auditing requirements.**²⁹
66. Its limitations include not covering empty containers and requiring modification to alter the basis for charging.³⁰ It may be pragmatic (in the interests of administrative simplicity and efficiency) not to worry about applying the levy to empty containers (especially if increasing the rate by only around 12 cents per TEU would make up the foregone revenue). The Steering Committee has held initial and encouraging discussions with the Department of Home Affairs.
67. Other arguments put forward against using the Full Import Declaration, and counter arguments to them, include:
- the Full Import Declaration does not allow a charge for low value goods (under \$1000):
 - this is a minimal issue for sea freight (maybe more an issue with air freight); and
 - the Full Import Declaration charges a fixed price per consignment, which may cover multiple containers or a less than container (LCL) load:
 - given the Full Import Declaration contains almost all the information needed to calculate the levy on all cargo types (including FCL, LCL, break-bulk and bulk), a small additional calculation (software adjustment) should readily extract either the numbers of containers involved in a consignment (including forty versus twenty footers) or the fraction of a container, and the levy payable thereby calculated.³¹
68. Further discussion is required to resolve these issues and to reach a judgement as to whether the Full Import Declaration is or is not a suitable collection mechanism. An important consideration is whether the software adjustments needed to enable it to be so used can be made within the available time.

²⁸ A recent example of cost escalation concerns infrastructure surcharges imposed by stevedores, a flat per container fee. These are paid by transport operators before containers are collected and are then passed on to customers. In one case, a \$34 stevedore infrastructure charge has become a \$45 charge passed on by a transport operator (a 32% increase), highlighting the extent of cascading of costs.

²⁹ Shipping Australia (2018), Letter to the Minister for Agriculture and Water Resources, 6 September, 2018. The letter was endorsed by an additional 28 trade-related organisations and businesses.

³⁰ Department of Agriculture and Water Resources (2018), *Biosecurity Imports Levy – Questions and answers*, Canberra.

³¹ Shipping Australia, *Op. cit.*

Question 8. Do you support use of the Full Import Declaration as a means of collecting the levy? If so, please amplify your views in light of the above discussion. If not, why not, and what alternative collection mechanism would you support?

K. Industry Contributions to Biosecurity Funding

69. One issue raised frequently during the Departmental consultation program was the extent of existing private sector contributions to the overall biosecurity system. These occur both via formal cost recovery charge mechanisms, and via voluntary expenditure (frequently undertaken with Departmental guidance or involvement) designed to reduce biosecurity risk, especially pre the border (that is, in the countries exporting products to Australia).
70. The extent of these industry contributions is not well understood. This was recognised by the Craik Report, which discussed the subject at some length and recommended that industry itself should be proactive in documenting and quantifying them.³² However, the Craik Report also observed that “there are some groups that are not pulling their weight and it is appropriate for governments, industry and the community to continually look at who should be paying and how much they should be contributing.”³³
71. The following table shows Federal Government and private sector contributions to biosecurity. It updates, and is more comprehensive than, Table 7 in the Craik Report; it includes projections from the forward estimates. It shows that direct (that is, cost recovered) industry contributions are a substantial portion – more than half – of the total.

Funding Source	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Government (\$m)	307	236	235	244	274	304
Cost recovered (\$m)	322	367	389	386	439	428
Total (\$m)	629	603	623	630	713	732
% Cost recovered (%)	51	61	62	61	62	58
Funding Source	2017-18	2018-19	2019-20	2020-21	2021-22	
Government (\$m)	322	407	351	349	346	
Cost recovered (\$m)	430	433	434	439	444	
Total (\$m)	752	840	785	788	790	
% Cost recovered (%)	57	52	55	56	56	

Source: Department of Agriculture and Water Resources, data provided to the Steering Committee.

Note: \$s are nominal. Data includes Budget Outcomes 1 and 2, plus appropriations for national partnership payments to the States for biosecurity. The Craik Report Table 7 contained just Outcome 2 data and was expressed in real terms.

³² Wendy Craik, *et al*, *Op. cit.*, P 105 (Table 7), P 108, P 128.

³³ *Ibid.*, P131.

Question 9. Please comment on the extent of industry contribution to the overall biosecurity system from your knowledge and perspective. Please provide specific examples and if possible \$ figures, where this information might not be well understood.

L. Proposed Biosecurity Activities to Benefit from the Levy

72. The Department has stated that: “the levy will support a smarter and more efficient biosecurity system that protects our agricultural production, trade and environment while facilitating trade by:
- offsetting costs of biosecurity activities that manage the types of risks created by vessels and containers carrying imported goods entering Australia by sea;
 - streamlining our regulatory activities at the border to better target high risk goods and reduce regulatory costs for importers of low risk goods;
 - trialling new technologies and smarter border processes to improve our ability to detect biosecurity risks at the border;
 - strengthening our assurance and verification activities at the border to better identify and target non-compliance with our biosecurity requirements;
 - improving our capability to identify and target high biosecurity risk pathways, such as sea cargo; and
 - increasing investment in the delivery of effective biosecurity services, such as screening passengers and cargo at sea ports, as the volume and complexity of trade into Australia increases.”³⁴
73. In terms of specific expenditure programs to which levy revenue should be applied, the Department has suggested these might include:
- Assurance, verification and enforcement;
 - Modern, Seamless Border Clearance;
 - Priority Pest and Disease Planning and Response;
 - Indigenous Biosecurity Rangers Program;
 - Biosecurity predictive analytics and intelligence;
 - Emergency response funding;
 - Biosecurity Innovation Program;
 - Environmental Biosecurity Protection;
 - International Ports – Supplementary funding; and
 - Tasmanian Fruit Fly – Emergency Response.³⁵
74. A number of industry participants have expressed concern about this list. Some items appear to be of doubtful relevance to a general biosecurity levy. Others do not appear to represent new programs or expenditure. The total expenditure implied by the full list seems to fall short of targeted revenue collection, accentuating concerns that levy revenue will not be fully transferred to the biosecurity system.
75. Equally, the Steering Committee understands that expenditure programs are likely to evolve as new biosecurity threats manifest themselves. The Steering Committee will not have time, nor is it appropriately qualified, to assess such claims in detail. However, it considers that these

³⁴ <http://www.agriculture.gov.au/SiteCollectionDocuments/biosecurity/levy-questions-answers.pdf>

³⁵ See <http://www.agriculture.gov.au/biosecurity/aus-gov-biosecurity-priorities>

concerns reinforce the justification of a high-level Biosecurity Advisory Council (as discussed earlier) where private sector concerns could be raised and hopefully resolved.

Question 10. Please provide comments on the appropriateness and extent of biosecurity expenditure programs and general activities that have been identified for funding from the biosecurity levy. Are there any other activities that might be appropriate for funding?

M. Conclusion

76. The Steering Committee is conscious of the challenge it faces in seeking to resolve the reservations expressed and in coming up with a broadly agreed set of recommendations to the Minister that are consistent with its Terms of Reference. Its work will be significantly assisted by constructive responses received from interested parties, especially, but not limited to, the questions posed through the paper.

1 April 2019.

Appendix: Terms of Reference

Biosecurity risks are changing as import volumes increase and new pathways emerge or become more complex. In the 2018-19 Budget, the Australian Government announced imposing a levy on imports arriving by sea to invest in a stronger, fit-for-purpose biosecurity system.

In the course of the Department of Agriculture and Water Resources engaging with industry about implementation, industry stakeholders raised a number of concerns about the levy, in particular the design and scope of the levy and the limited consultation.

The Australian Government is committed to the Biosecurity Imports Levy. However, in light of continuing industry stakeholder feedback, the Minister for Agriculture and Water Resources is establishing an industry steering committee so industry stakeholders will be better able to support and contribute to the design of the levy.

The Steering Committee's considerations and recommendations will assist the Government in further considering design and scope elements of a levy.

Scope

The steering committee will make recommendations to the minister on a possible scope and design for an ongoing biosecurity import levy, with specific reference to:

- base;
- rate(s)
- imposition point(s) of financial liability – including but not necessarily limited to ports, importers, shipping lines, customs brokers and stevedores, and
- collection mechanism(s),

and having regard to:

- processes of importing that might raise biosecurity risks
- the outcomes of consultation on the proposed levy to date
- the inclusion of all containerised and non-containerised cargo transported to Australia by sea, with the exception of military equipment
- simplicity and predictability for levy payers
- administrative efficiency and practicality for affected industry and government, and
- the aim of raising an estimated \$325 million (net) over the first three years.

The steering committee's recommendations will be informed by consensus committee views. Dissenting views will be clearly set out and attributed. Information and data supporting conclusions will be provided to support government consideration, including potential costing of proposals by the Department of the Treasury.

Consultation

The steering committee will consult widely, including through the invitation of submissions, within scope, from any interested parties.

All submissions received, and meetings held, by the steering committee will be recorded and appended in full to the committee's recommendations to the minister. All submissions will be placed on the department's website

If, in the course of the steering committee's considerations, it becomes clear that an industry or sector not already represented within the committee membership or engaged in consultation, may potentially be captured within the committee's recommendations, the committee will invite input from the relevant peak representative body or association.

Membership

The minister will appoint up to 9 individuals to the steering committee. These individuals represent expertise in potentially impacted industry sectors and the supporting industries.

The committee will be led by a respected and independent chair appointed by the minister.

The committee will be supported by a secretariat independent of the Department of Agriculture and Water Resources and of industry.

Timing

The steering group will start immediately and will make recommendations to the minister no later than 1 June 2019.

Resourcing

The Chair will determine administrative arrangements with reasonable costs negotiated with and met by the department.

With the exception of the independent chair, steering committee members will not be remunerated. Committee members will be responsible for the costs of attending any committee meetings.