

Community and Public Sector Union

Rebecca Fawcett – Acting Deputy Secretary

19 December 2012

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
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Dear Sir/Madam

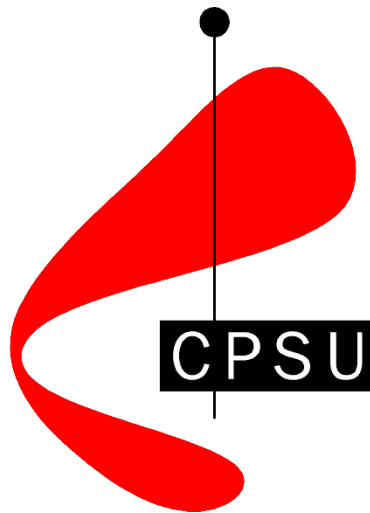
Re: CPSU Submission to the Inquiry into Biosecurity Bill 2012 and the Inspector-General of Biosecurity Bill 2012

The Community and Public Sector Union (CPSU) welcomes the opportunity to make a submission to the Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Biosecurity Bill 2012 and the Inspector-General of Biosecurity Bill 2012.

The CPSU thanks the Committee for the opportunity to comment on these issues and express the concerns of staff who will be called on to implement this legislation .

Yours sincerely

Rebecca Fawcett
CPSU (PSU Group)
ACTING DEPUTY SECRETARY



CPSU (PSU Group) Submission:

**Inquiry into the Biosecurity Bill 2012
and the Inspector-General of
Biosecurity Bill 2012**

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Background

The PSU Group of the CPSU represents workers in the Australian Public Service, the ACT and Northern Territory Public Service, the telecommunications sector, call centres, employment services and broadcasting. We are a national union with members in every state and territory.

The CPSU is the principal union representing employees in the Agriculture, Fisheries and Forestry portfolio.

The CPSU has prepared this submission after consultation with CPSU Section Council, delegates and members in the Agriculture, Fisheries and Forestry portfolio.

The purpose of Biosecurity Bill 2012 is to replace the *Quarantine Act 1908*, implement a risk based approach to biosecurity management and an integrated approach across the biosecurity continuum; involving offshore, border and onshore activities.

The feedback provided by members relates to a range of concerns around industry self-regulation and the need for greater clarification about powers and responsibilities. CPSU members also highlighted the need for additional resourcing to manage the expected increased workload from proposed reforms.

In response to the proposed changes, CPSU members identified issues regarding:

1. Consultation with Departmental staff on the Regulations;
2. Impact of changing powers and responsibilities on accountability;
3. Potential adverse impacts of self-regulation; and
4. Reporting signs and symptoms listed human diseases on incoming vessels.

These issues were previously raised with the Department by the CPSU during the consultation on the draft legislation in October 2012. The concerns raised have not been addressed in proposed Biosecurity Bill 2012.

Summary of Recommendations

1. Delay passage of the Bill until Departmental staff are consulted on the Regulations and are able to provide feedback.
2. Amend the Bill to clearly outline what functions industry participants will be allowed to do.
3. Amend the Bill to only allow the temporary appointment of "another person".
4. Amend the Bill to add a legislated criterion for the appointment of "another person considered necessary as a biosecurity officer.
5. Amend the Bill to ensure the APS Code of Conduct applies to all Authorised Officers regardless of whether they are APS employees.
6. Amend the Bill to ensure sanctions are automatically enacted after a time limited period for those industry participants who are found to be non-compliant
7. Amend the Bill to include a precautionary principle modelled on the Queensland Biosecurity Act 2011.
8. Amend the Bill to includes a requirement that operators of incoming vessels to report individuals with any signs of symptoms of listed human diseases

Issues

1. Consultation on the Regulations

CPSU members welcomed the extended period of consultation about Biosecurity Bill provided by the Department in October. The process allowed members to raise their concerns about the Bill.

There is, however, concern that there will not be an opportunity to comment on the Regulations before passage of the Bill. Much of detail referred to in the Bill is in the Regulations and will affect staff. This includes the reclassification of staff and the definition of an experienced and qualified auditor.

Members have indicated they want to examine the Regulations to provide feedback. Passage of the Bill should be delayed until after there is a period of consultation with Departmental staff on the proposed Regulations.

The CPSU recommends a period of genuine consultation on the proposed Regulations prior to the passage of the Bill.

Recommendation: Delay passage of the Bill until Departmental staff are consulted on the Regulations and are able to provide feedback.

2. Impact of changing powers and responsibilities on accountability

CPSU members raised a number of questions about the impact of the proposed changes on the role of Departmental employees, what powers authorised officers and industry participants will have and the implications for accountability.

Division of responsibilities between industry participants and the Department

Most members' concerns related to new biosecurity provisions for industry participants. Greater clarification is needed about the powers industry participants will have and whether Departmental employees will lose responsibilities. For example, under the legislation, industry participants will be able to release their own goods which may affect the responsibilities Departmental staff have:

Goods that are subject to biosecurity control are released from biosecurity control if a written notice releasing the goods from biosecurity control is given to a person in charge of the goods by a biosecurity industry participant who is authorised to release the goods in accordance with an approved arrangement covering the biosecurity industry participant.¹

The CPSU is concerned that these new biosecurity provisions will create a conflict of interest for industry participants. Companies will inevitably consider the impact on profits when making decisions, including releasing goods from biosecurity control. It is foreseeable that some industry participants will prioritise their financial interests ahead of the national interest, leading to biosecurity incidents. These concerns are explored in more detail later in this submission.

Accountability of industry-employed staff

A major concern is the lack of difference between Biosecurity Officers and authorised officers. The legislation outlines provisions for authorising "another person" to be a biosecurity officer, stating that.

The Directory of Biosecurity may, in writing, authorise a person to be a biosecurity officer under this Act if the person is another person who the Director of Biosecurity considers it necessary to authorise to be a biosecurity officer under the Act²

The Department has indicated that the intent of the new legislation is to "provide scope, where it is appropriate to do so, to allow limited functions performed by biosecurity officers" to be done by

¹ Biosecurity Bill 2012, Chapter 3, Part 1, Division 10, Section 160, 1b

² Biosecurity Bill 2012, Chapter 12, Part 4, Division 1, Section 583, 1a

industry participants. The new clause, however, seems to be quite broad, leaving the potential for industry employed staff to undertake the core duties of officers. In contrast, the current *Quarantine Act* is quite specific about what external arrangements can be approved.

Staff are concerned that company employees may be authorised as Departmental biosecurity officers, leading to far less accountability. It will be difficult for a company employee to be truly independent of their employer and act in the national interest in the manner that a Departmental employee can.

Further clarification is also needed to outline the criteria used to determine whether “another person” is actually necessary. The relevant clause only states that “another person” may be appointed if:

... The person satisfies the training and qualification requirements for biosecurity officers determined under subsection (5).³

The Director of Biosecurity appears to have discretion to “*determine, in writing, training and qualification requirements for biosecurity officers.*”⁴ It is unclear if requirements will be in Regulations or if it will be a determination made by the Director of Biosecurity as “*a determination made under subsection (5) is not a legislative instrument.*”⁵

Members want certainty that “another person” will only be appointed if truly necessary and will not be used as a means to replace ongoing Departmental staff who do not have conflicts of interest. The CPSU recommends that the legislation is amended so the Director of Biosecurity may only be able to appoint “other persons” for a temporary period. There should also be included legislative criteria to determine whether the appointment of other persons as biosecurity officers is necessary.

Recommendation: Amend the Bill to clearly outline what functions industry participants will be allowed to do.

Recommendation: Amend the Bill to only allow the temporary appointment of “another person”.

Recommendation: Amend the Bill to add a legislated criterion for the appointment of “another person” considered necessary as a biosecurity officer.

Third party auditors

Members were concerned that the Bill allows third party auditors to be approved to conduct audits, in addition to Biosecurity Officers:

*An auditor approved in writing by the relevant Director.*⁶

Members are concerned that the reference to third party auditors is an indication that the regular outsourcing of auditing by the Department is an option for the future. The Departmental response that it “*does not intend to routinely make use of third party auditors in the near future, but the legislation aims to ensure there is sufficient flexibility to do so in the future, if needed*” has not alleviated but added to this concern.

One member indicated that management informed them that third party auditors were required as the Department does not have staff that are currently qualified to audit some scientific labs. There may be some justification for involving third party auditors for highly complex systems; however, this is not specified in the proposed legislation. Clarification is needed to ensure that third party auditors work under direction of the Department and are only there to provide technical expertise.

The Department must also clarify how it will determine third party auditors are necessary and what process will be undertaken to assess their expertise. The proposed Bill states that:

³ Biosecurity Bill 2012, Chapter 12, Part 4, Division 1, Section 583, 1b

⁴ Biosecurity Bill 2012, Chapter 12, Part 4, Division 1, Section 583, 5

⁵ Biosecurity Bill 2012, Chapter 12, Part 4, Division 1, Section 583, 6

⁶ Biosecurity Bill 2012, Chapter 7, Part 7, Division 2, Section 434, 2b

The relevant Director must not approve a person for the purposes of paragraph (2)(b) unless the person is appropriately qualified and experienced.⁷

This statement does not clarify how a third party auditor will be determined to be qualified and experienced other than an assessment by the Director. Any requirements in relation to carrying out audits or what constitutes an appropriately qualified or experienced auditor have been deferred to regulations which are not available.

Without being able to view the Regulations, there can be little confidence that third party auditors will only be used when they have specialist expertise required, which Biosecurity Officers do not have, to conduct an audit. The Regulations must be publicly released and a process of genuine consultation needs to occur.

3. Potential adverse impacts of self-regulation

Many CPSU members expressed concerns that the move away from Department-run inspections towards self-regulation by industry participants may have adverse impacts on quarantine outcomes.

Under the proposed legislation, industry participants will be responsible for managing their own biosecurity risks:

A person may apply to the relevant Director for approval of a proposed arrangement that provides for the person to carry out specified activities (biosecurity activities) to manage biosecurity risks associated with specified goods, premises or other things.⁸

While the Department has indicated that it will allow limited functions to be carried out by industry participants under an approved arrangement, there is concern that the clause is very broad and that multiple locations with different conditions will be covered by a single agreement. CPSU members wanted to know what those limited functions are and what are approved arrangements including whether it included self-assessment. The current *Quarantine Act* is quite specific about what arrangements can be approved.

Members also indicated that the proposed self-regulation of import inspections by industry participants is similar to the current regime for exports and for meat inspectors. There are a number of issues with industry self-regulation for exports which will need to be addressed.

Managing conflict of interests

There was concern about the potential for conflict of interest with self-regulation, particularly if there are company-based inspectors. It is unclear, if the staff of industry participants are authorised to take on biosecurity roles and how accountability and independence in the national interest will be guaranteed. Any assessment of risk by an industry participant is likely to be influenced by the monetary impact of a decision.

The CPSU previously raised these concerns about the conflict of interest of authorised officers, employed by industry rather than the government, and the difficulty to be independent of their employer in a submission to the *Inquiry into biosecurity and quarantine arrangements* about changes to the Australian Meat Export Inspection System in November 2010.⁹

While self-regulation may be an improvement for the businesses that do the right thing and reduce their costs, there is a greatly increased risk from those who are not doing the right thing want to avoid additional costs.

An example provided by a member was the importation of heavy machinery. Imported heavy machinery needs to be "as clean as new" and are assessed at Quarantine Approved Premises. The member indicated that often these imports are failed by the Department multiple times as they are not

⁷ Biosecurity Bill 2012, Chapter 7, Part 7, Division 2, Section 434, 3

⁸ Biosecurity Bill 2012, Chapter 7 Part 2, Section 403

⁹ Community and Public Sector Union, "Submission to Inquiry into biosecurity and quarantine arrangements", 18 November 2010, p.3

“as clean as new”. It is unclear how there will be a guarantee that this will occur with self-regulation unless caught out by an audit.

While a fit and proper person test may profile importers, this will not be enough. Greater investigation of the potential biosecurity risks of industry participants and surveillance will be required to offset these increased risks. More information is needed about how the monitoring of approved arrangements will take place to ensure compliance.

The CPSU recommends that the APS Code of Conduct and other public service regulations should apply to those “another person” who will be authorised under the new legislation. While the Department has indicated that as “another person” would not be APS employees and thus would not be subject to the Code of Conduct, these provisions already exist for non-APS staff working in the meat inspection export system. Companies are able to engage authorised officers under the Australian Meat Inspection System who are qualified persons, authorised by DAFF. They are legally bound to the Commonwealth and must comply with the APSC Code of Conduct.¹⁰ Though not perfect, it may help address some concerns about independence and conflict of interest.

Increased risk of biosecurity incidents

CPSU members are very concerned that biosecurity incidents will increase and that pre-damage control will be far more difficult due to industry self-regulation. It is likely to shift the focus to damage control where the Department will be dealing with a biosecurity risk once it has entered the community, rather than stopping those risks at the border.

For exports, the risk is to overseas markets. With imports, there are also biosecurity risks to Australian animal health, human health, the environment as well as our export markets. Once a biosecurity risk is in, there is limited power to stop it. New Zealand has experienced damaging incursions such as Varroa mite and this has only been kept out of Australia due to our strict quarantine laws.

This is a legitimate concern as industry self-regulation may mean that many non-commercial imports will undergo the same level of inspection as commercial imports (low approach rate). This inadequate as this is often the source of quarantine breaches.

Furthermore, members working as government meat inspectors indicated their experience of self-regulation have been reduced inspection rates and that industry assessments have not been as effective as Departmental inspections. A recent report that over the past year, 13 shipments of Australian meat have been rejected by the United States because they contained faeces or other matter and E.coli was detected in three shipments confirms that self-regulation has not been as effective.¹¹

One option to address this increased risk may be to adopt a precautionary principle, similar to the Queensland new biosecurity legislation. The Queensland *Biosecurity Act 2011* included in its purpose that:

*...the principle that lack of full scientific certainty should not be used as a reason to postpone taking action to prevent a biosecurity event or to postpone a response to a biosecurity risk*¹²

The inclusion of a precautionary principle would help maintain a level of protection which would prevent a lack of scientific certainty from being the reason to prevent a biosecurity event or postpone a response to a biosecurity.

Sanctions for non-compliance

Members in export areas indicated that their experience is that auditing regimes may find critical non-

¹⁰ Department of Agriculture, Fisheries and Forestry, *Export Certification Reform Implementation FAQs - Australian Export Meat Inspection System*, <http://www.daff.gov.au/agis/export/meat/elmer-3/export-certification-reform-implementation-faqs-australian-export-meat-inspection-system>, last reviewed 5 June 2012

¹¹ Brewster, Kerry, “Aussie meat exports found with E.coli, faeces”, *ABC News*, 25 May 2012, <http://www.abc.net.au/news/2012-05-25/aussie-meat-exports-found-with-e-coli/4032216>.

¹² Queensland Legislative Assembly, *Biosecurity Act 2011*, Chapter 1 Part 2, Section 4, C

compliance but nothing will happen for a significant period of time. Their past experience has been that industry participants can continue to operate for another six months before being suspended.

As imports have a greater risk than exports, it is essential that sanctions do not take a long to come into effect. Without an effective deterrent for non-compliance, it is possible that more industry participants could continue to fail to comply, creating further biosecurity risks. The automatic enactment of sanctions after a limited time period must occur for non-compliant industry participants.

Recommendation: Amend the Bill to ensure the APS Code of Conduct applies to all authorised officers regardless of whether they are APS employees.

Recommendation: Amend the Bill to include a precautionary principle modeled on the Queensland Biosecurity Act 2011.

Recommendation: Amend the Bill to ensure sanctions are enacted automatically after a time limited period for those industry participants who are found to be non-compliant.

4. Reporting signs and symptoms of listed human diseases on incoming vessels

CPSU members are concerned that there appears to be no requirement for the operators of incoming vessels to report people with signs or symptoms of listed human diseases in the proposed legislation. It is unclear whether the requirement is in another section of the legislation or the intent behind such a change.

Currently, *Quarantine Act 1908* clearly places the responsibility with the master of the vessel to report any individuals with signs or symptoms.¹³ The proposed Bill is clear in the exit requirements that the operators have responsibility to report¹⁴, however, it appears that the responsibility lies with the individual on incoming vessels as there is nothing in the entry requirements about this.

The proposed Bill must include an obligation on the operators of incoming vessels to report any signs and symptoms of listed diseases as a safeguard to prevent any possible outbreak.

Recommendation: Amend the Bill to include a requirement that operators of incoming vessels to report individuals with any signs of symptoms of listed human diseases.

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¹³ Quarantine Act 1908, Part IV, Division 1, Section 22

¹⁴ Biosecurity Bill 2012, Chapter 2, Part 2, Division 2, Section 44, 6b