Ms Jeanette Radcliffe
Committee Secretary
Senate Rural and Regional Affairs and Transport References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

21st October 2011

Dear Ms Radcliffe,

Inquiry into the Quarantine Amendment (Disallowing Permits) Bill 2011

We refer to your letter of 21st September 2011 inviting a submission that addresses all or some of the issues identified in the bill by 21st October 2011.

The Industry Working Group on Quarantine (IWGQ) membership comprises most of those industry groups that are the key stakeholders in the Australian Quarantine and Inspection Service's (AQIS) major activity areas covering cargo, shipping, aviation and related areas of biosecurity interests such as land based infrastructure. Members of the IWGQ participate in consultative committees such as the AQIS Industry Cargo Consultative Committee (AICCC), Imported Food Consultative Committee (IFCC) and the Biologicals Consultative Group (BCG).

The issues under reference are of major concern to the IWGQ membership as the efficient operation of the AQIS import permit system is an important component of the logistics supply chain working without major interruptions and the availability of permit goods is often essential for local trade, production, animal and human health issues to name a few.

The second reading speech of Senator Xenaphon on 25thth August notes that the purpose Bill is *"to ensure that any decision to allow the importation, introduction, bringing in of or removal of a thing—defined under the Quarantine Act 1908 as an animal, plant, substance of thing—is thoroughly scrutinised."* Its aim is "*to protect Australia's agricultural sector from disease by further scrutiny of import risk analyses and quarantine determinations.*"

It is the view of the IWGQ that the Bill not sound in principle, contrary to Australia's WTO obligations, practically unworkable, not necessary and as noted above has the potential to cause significant and unnecessary delays and costs to the issuing of permits and hence to trade and the supply chain. It also has the potential to disclose permit information, such as manufacturing and component information that has been and needs to be treated as commercially confidential.

The IWGQ would suggest to the Committee to recommend that the Bill not be passed.

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Not sound in Principle

Australia, as a major trading nation in primary produce depends on National Biosecurity System and has organisations such as Animal Health Australia (AHA) , Plant Health Australia (PHA) whose activities, apart from those of the Australian Quarantine and Inspection Service (AQIS) and its stakeholders underpin a sound biosecurity system. Such a system ensures Australia's favourable pest and disease status, which is integral to Australia's agricultural and food sector, and minimises the risk of harm to the country's environment and biodiversity.

The Appropriate Level of Protection (ALOP) and its administrative framework is set by Parliament via the Quarantine Act 1908 and subordinate legislation including the Quarantine Regulations 2000 and the Quarantine Proclamation 1998 . The quarantine proclamation identifies goods that may not be imported into Australia unless the Director of Animal and Plant Quarantine or delegate grants an import permit or unless they comply with other conditions specified in the proclamation. Section 70 of the Quarantine Proclamation 1998 specifies the things a Director of Animal and Plant Quarantine must take into account when deciding whether to grant a permit:

- must consider the level of quarantine risk if the permit were granted, and
- must consider whether, if the permit were granted, the imposition of conditions would be necessary to limit the level of quarantine risk to one that is acceptably low
- may take into account anything else that he or she knows is relevant.

The level of quarantine risk is defined in section 5D of the Quarantine Act 1908 as follows: "reference in this Act to a level of quarantine risk is a reference to:

(a) the probability of:
    (i) a disease or pest being introduced, established or spread in Australia, the Cocos Islands or Christmas Island; and
    (ii) the disease or pest causing harm to human beings, animals, plants, other aspects of the environment, or economic activities; and
(b) the probable extent of the harm.

The Quarantine Regulations 2000 were amended in 2007 to regulate keys steps of the import risk analysis process (IRA). The Regulations define both, a standard and an expanded IRA, identify certain steps which must be included in each type of IRA, specify time limits for certain steps and overall timeframes for the completion of IRAs and specify publication requirements

The Bill under reference would take Parliament beyond its role of setting of the framework by way of a proper legislative function, and insert the Parliament into the detailed administrative and operational application of policy. Parliament would be assessing the merits of particular cases that attach to each permit application.

An essential element of the WTO SPS agreement to which Australia is a signatory provides Australia with the right to adopt sanitary and phytosanitary measures necessary for the protection of human, animal and plant life or health. As noted the level of protection is determined by the ALOP and any measures to comply with that level must be science-based, not more trade-restrictive than necessary and not arbitrarily or unjustifiably discriminatory against trading partners. Most issues in IRAs are complex involving very detailed science assessments and risk estimation techniques.

Whilst the IRA processes being carried out by Biosecurity Australia (BA) are established and strictly followed how does Parliament intend to scrutinise biosecurity assessments / decisions? Are there to be formal hearings and will affected parties be afforded an opportunity to be heard?

This IRA framework has been the subject to ongoing reviews and the Beale Panel scrutinised the processes and requirements in its exhaustive review of the Australian biosecurity system. While the Panel did make some recommendations about the government and parliamentary oversight of biosecurity, it did not recommend that quarantine decisions should become disallowable instruments which, in any case is not in accord with the WTO principles

Practically Unworkable
The IWGQ has serious concerns in relation to the workability of this Bill and based on some information available to IWGQ members the following picture emerges.

In the 2010/11 financial year some 22,303 permit application were lodged with 19,054 or approx 85% granted. Import permits fall into five categories (please refer Attachment 1) of which only category 1 is for standard goods, these being goods to which pre-determined conditions, such an IRA, apply.
We understand that less that 2,000 permits applications or less than 10% of the total fell into this category. We assume that permit applications for this category would not be subject to referral to Parliament once the standard conditions are agreed.

The remaining 20,300 import permit application are covered by the other four, non standard goods, categories for which no predetermined import conditions are in place and thus would, under the proposed legislative instrument, become "disallowable instruments" and thus require referral to Parliament. It is suggested these referrals would cause a significant work load for AQIS and the Parliament in presenting and dealing with the applications and, no doubt result in significant delays and costs for all permits that require referral.

Not necessary
The current import application and assessments processes provide for extensive scrutiny of scientifically assessed risk in accordance with the quarantine policy developed by AQIS which is in line with its obligation to maintain the ALOP and other requirements aimed at maintaining Australia's biosecurity standard

Disclose Commercially Confidential Information
A consequence of the Bill is the disclosure of the name of the applicant or holder of any permit tabled in Parliament. The name of a permit holder, supplier, manufacturer and all the details of the commodity permitted to be imported under a permit are currently, as we understand it and rightly so, treated as confidential on commercial grounds. AQIS does not disclose this information and it is noteworthy that on occasions AQIS will obtain information from overseas suppliers which is not subject to disclosure to permit applicants to maintain confidentiality and thus protect IP and patent rights of suppliers. Another complication would be that only the names of the applicants or holders of the permit tabled in parliament that would be disclosed.

There appears to be no valid reason for the names of permit applicants or holders and the commodities permitted to be imported to publicly released.

Impact on the Biosecurity Framework
The Nairn Review of 1996 identified and promoted the concept of Quarantine / Biosecurity being a shared responsibility and that concept has been incorporated into Australia's biosecurity system for many years and IWGQ members have been very active participants for many years. The Beale review in 2008 reaffirmed the validity of that concept.

IWGQ members, including importers, customs brokers, freight forwarders, shipping and air lines, logistic operators, quarantine approved premise operators and all parties that participate along the continuum of biosecurity play a proactive role in ensuring any commodities and non commodity biosecurity issues they deal with are addressed in accordance with mutually agreed principles and thus do not pose a biosecurity risk.

Industry meets it own compliance costs and all relevant AQIS activities are fully cost recovered from industry to the tune 175.0mil plus in the last financial year

Much work has been done to develop a close working relationship built on trust and mutual respect between AQIS and all industries it deals with. This bill essentially sends the message to this industry that the Parliament does not trust AQIS to administer biosecurity in a professional manner and its ability to correctly assess biosecurity risks by requiring Parliamentary checks of all activities of a major activity area. AQIS makes many decisions every day that affect industry. If AQIS decisions are not regarded by Parliament to be trustworthy why should industry accept these decisions? This bill, if passed, will jeopardise the standing of AQIS and that of the wider Department of Agriculture, Fisheries and Forestry (DAFF) which includes some currently highly regarded divisions such as ABARES.

It is worth noting that, under international World Trade Organisation (WTO) Sanitary and Phytosanitary (SPS) measures and by way of bi-lateral agreements AQIS is also the certifying body for a wide range of Australia's primary exports products. The impact on Australia's export trade processes that the bill under reference may have on the credibility of AQIS in that role should be considered.

It is a known fact that there is an international perception among Australia's trading partners that the biosecurity process is not sufficiently science based and prone to political intervention and protectionist. This bill will confirm that perception

The IWGQ reiterates its submission to the Committee that the bill should not be recommended to be passed.

We would be prepared to provide additonal detailed information and meet with the committee to support this submission.

Yours Faithfully
Industry Working Group on Quarantine

Hart Krtschil
Secretariat

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Import permit assessment and application fees	
Service	
Category 1 (Standard goods)	Each assessable item = $40.00
Category 2 (Non-standard goods) (for an initial assessment period up to 1 hour)	Each assessable item = $80.00
Category 3 (Non-standard goods) (for an initial assessment period up to 2 hours)	Each assessable item = $160.00
Category 4 (Non-standard goods) (for an initial assessment period up to 3 hours)	Each assessable item = $240.00
Category 5 (Non-standard goods) (for an initial assessment period up to 4 hours)	Each assessable item = $320.00

Explanatory notes

- An import permit application fee must contain a lodgement and assessment fee.
- Manual lodgement applies to applications that are scanned and emailed, faxed or posted.
- Electronic lodgement applies to applications received via AQIS's online lodgement system.
- For each quarter hour, or part of a quarter hour, that an assessment exceeds the initial assessment period, a Fee for Service charge will also be payable.
- A single assessment fee of $40 is payable for an ePermit application for Standard goods (Category 1) listed as 'ePermitable'.

Standard Goods means: goods, other than live animals and animal reproductive material, **for which AQIS has established import permit conditions**.

Non-standard goods means: (a) goods for **which AQIS has no established import permit conditions,** and
(b) live animals and animal reproductive material.

Category 2—(non-standard) goods

- A product to which a compliance agreement applies

- A cell line derived from laboratory animals
- A cell line derived from a non-laboratory animal
- A fermented product that is not a veterinary therapeutic product or a stock food product
- A parasite
- Canned pet food
- Cats or dogs, other than the first cat or dog in a consignment
- Cosmetics
- Cut flowers
- Dried herbs
- Dried spices
- Food items for human consumption
- Fruit
- Herbarium specimens not infected or infested
- Hides or skins
- Human therapeutics (private and commercial)
- Human vaccines
- Laboratory material (proteins, DNA, animal sera)
- Microbes
- Natural fibres and fibre products
- Non-organic fertiliser (bulk)
- Plant-based stockfeed samples for in vitro use
- Plant material, seeds or grains, or both, for in vitro use
- Seeds or grains for processing or human consumption or both
- Soil samples
- Vegetables
- Water

Category 3—(non-standard) goods

- Herbal teas
- Herbarium specimens infected and infested plant material and seeds or grains for in vitro use (infected or infested)
- Plant pollen for in vivo use
- A micro-organism (possible pathogen)
- Aquaculture feed or bait
- Wood chips or charcoal for cooking or smoking food
- Wine barrels

Category 4—(non-standard) goods

- Animal reproductive material
- Biological control agent
- Bird seed
- Live animals, including the first cat or dog in a consignment, but not subsequent cats or dogs in a consignment
- Plant-based stock feed
- Plant pathogens for in vivo or in vitro use
- Seed or plant material for processing into pet food
- Bulk culture (medium)
- Dried pet food
- Organic fertiliser

Category 5—(non-standard) goods

- Biological material for in vivo use
- A single new master seed
- An additional new master seed which is part of a live or inactivated veterinary vaccine
- A single new veterinary vaccine that is live or inactivated with a single master seed
- A single veterinary vaccine renewal that is live or inactivated

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