16 January 2015

The Secretary

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Submission to the Senate Rural and Regional Affairs and Transport Legislation Committee Regarding the Biosecurity Bill 2014, and supporting Bills.

Dear Secretary

About AUSVEG

AUSVEG is the National Peak Industry Body representing the interests of Australian vegetable and potato growers. We represent growers around Australia and assist them by ensuring the National Vegetable Levy and the National Potato Levy are invested in research and development (R&D) that best meets the needs of the industry.

AUSVEG also makes representations on behalf of vegetable and potato growers to ensure their interests and concerns are effectively communicated to all levels of government, in the public sphere, and throughout relevant areas of the private sector.

AUSVEG executes its brief by delivering national projects in the areas of communication and the environment, as well as by providing leadership for our sector on a range of key issues.

Yours sincerely

Richard J Mulcahy

Preamble

The Australian vegetable industry is committed to biosecurity planning, preparedness and response activities. AUSVEG, the National Peak Industry Body for vegetable growers, takes a keen interest in ensuring that Australia enjoys robust biosecurity preparedness and response programs and evaluates existing mechanisms for exotic pest and disease incursion management in the industry.

AUSVEG welcomes the opportunity to provide feedback on the Biosecurity Bill 2014. However, we must express our concern that so little time has been allocated to review a very important piece of legislation that sits at the heart of Australia's trading and biosecurity systems. The legislation was publicly released on 27 November 2014, with comment required by 16 January 2015. This time frame covers the Christmas/New Year period which, traditionally, would be a holiday for most stakeholders. This limited time frame means that the response from AUSVEG has been concentrated primarily on the areas that have been of most concern to the organisation over recent years, particularly in terms of Import Risk Analyses.

If passed, the Biosecurity Bill 2014 will replace the *Quarantine Act 1908* as the primary legislation for Australia's biosecurity system. As the *Quarantine Act 1908* has been subject to numerous amendments over time, the primary legislation for Australia's biosecurity system has become convoluted and overly complicated. The replacement of a 100-year-old Act by a new Bill is welcome, particularly because it intends to bring much greater simplification to the existing system. Much of the Bill is common sense and will also, if passed, strengthen our biosecurity system.

Unfortunately, the opportunity to address some of the real concerns with the biosecurity process in Australia has been lost. This will be highlighted in the detailed comments below. Of particular note are the areas of Import Risk Analysis (IRA) formulation and comment, conflict of interest and transparency. All of these areas have been at the heart of the industry's concerns over recent years and have also been acknowledged by Senate Committees.

It is noted that the Bill is designed to be an overarching framework that will set the structure for a new system, and that much of the actual operational impact will be framed through appropriate Regulations. At this stage, these Regulations have not been released and our only guidance can come from the draft Regulations released in 2013 when the Biosecurity Bill 2012 was in public circulation. A number of the comments in this submission are thus framed from the viewpoint that many of the sentiments from the draft 2013 Regulations will be maintained. Given that the Biosecurity Bill 2014 has not had a major overhaul from the 2012 draft Biosecurity Bill, AUSVEG has no reason to believe that the draft Regulations released in 2013 have also undergone drastic changes.

General comments

AUSVEG notes that, for consistency, many aspects of the *Quarantine Act 1908* have been transitioned to the Biosecurity Bill 2014 with no change of powers, as outlined in the Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014.

It is unfortunate that no attempt has been made by the Federal Government to assist parties in examining the legislation by highlighting the areas that are different to the original Biosecurity Bill proposed in 2012. This would have greatly assisted parties under the limited time frame available, particularly given the statement from Department of Agriculture Deputy Secretary Rona Mellor that much of the original 2012 Bill remained, and that the most important changes revolved around Cost Recovery and the IRA process, whereby regional differences would be acknowledged. Most other changes were described as being "minor and technical".

It is also unfortunate that AUSVEG has not been accorded the opportunity to see other submissions and feedback from the original Bill, as this would have provided a much broader perspective on the issue. Moreover, the lack of this feedback to all concerned does not sit comfortably with the aim of the Department of Agriculture to be more transparent and open to stakeholders.

It would appear that many of AUSVEG's original comments that were drafted after the release of the Biosecurity Bill 2012 and associated draft 2013 Regulations still apply. Therefore, these comments have been appended to this submission.

Chapter-specific comments

Chapter 1, Part 1.

Appropriate Level of Protection (ALOP) for Australia against biosecurity risks

Clause 5

AUSVEG still has concerns that 'Appropriate Level of Protection' has been prescribed in the legislation as reducing risk to a 'Very Low Level'. We would ask why the level of protection needs to be prescribed in the legislation, especially when there is no formal definition as to what a 'Very Low Level' means. In our opinion, this either requires clarification or deletion from the Bill.

Additionally, the inclusion of the phrase 'Very Low Level' begs the question as to whether or not Australia's definition for 'Appropriate Level of Protection' is in harmony with what others perceive it to be. Having linked this definition to the SPS Agreement (Note 2 in the Biosecurity Bill 2014), AUSVEG notes that the SPS Agreement does not specify what the various levels of

protection represent from a probability perspective. To date, IRAs produced by the Department cover this as part of their introductory notes and have ascribed probability limits to this term. However, 'Very Low Level' in an article of legislation is not helpful and in our opinion it would be best to avoid using this term.

In addition, AUSVEG would ask what is to be gained from the inclusion of this term in the Bill. It would make greater sense to simply note that Australia has an Appropriate Level of Protection in accordance with the SPS Agreement, and that it is above zero risk.

Chapter 3, Part 1.

Goods brought into Australian territory

The inclusion of conveyances under the definition of goods is welcomed, as the risk posed by the movement of equipment can be substantial. This has been emphasised by the recent Cucumber green mottle mosaic virus (CGMMV) outbreak in the Northern Territory. The persistence of this virus in soil and plant debris highlights the role that conveyances may play in increasing the risks of transferring pests between properties.

Chapter 3, Part 2.

Biosecurity Import Risk Analysis

Clauses 165-170

The area of Import Risk Analysis is of great concern to stakeholders. According to Chapter 3, Part 2 (Clauses 165-170), the proposed legislation will consolidate current practice, which has been shown to require improvement by Beale et al. (2008) and the ongoing 2014 Import Risk Analysis Examination. It is unfortunate that previous issues raised by stakeholders, including the lack of a fully independent avenue for review of IRA processes, and a need to strengthen analysis of scientific content in IRA reports, have not been addressed in Chapter 3, Part 2 of the proposed legislation.

At this stage, all that can be noted is that the key attributes of the Biosecurity Import Risk Analysis (BIRA) process will be covered by regulation. We note that Chapter 3, Part 2 (Clauses 165-170) is extremely vague and provides little information regarding the circumstances under which a BIRA would be conducted, the BIRA process and methods of BIRA review. Until AUSVEG receives evidence to the contrary, comments made in our earlier submission on the Regulations, promulgated in May 2013 (see attachment) still apply. There also appears to be nothing in the Bill that will improve transparency, accountability and rigour, or reduce conflict of interest. Therefore, AUSVEG believes that the opportunity to enshrine these principles has been lost.

Chapter 3, Part 2.

Clause 165

A point of inconsistency is noted in the explanatory memorandum for Chapter 3, Part 2 Clause 165, which states that:

"A BIRA can be conducted for goods or a particular class of goods that may be imported or are proposed to be imported."

As constructed, this clause appears to permit that products may continue to be imported during the development of a BIRA and makes the basis for conducting a BIRA, as a pre-border biosecurity risk mitigation strategy, open to criticism and scepticism both internally and abroad. This clause requires a clear directive that prohibits the continued import of goods during the development of a BIRA.

Chapter 3, Part 2.

Clause 167

While the Regulations will dictate the administrative aspect of the BIRA processes, several provisions outlined in the proposed primary legislation indicate that the BIRA system will remain an insular process, heavily controlled by the Department of Agriculture. For instance, the Director of Biosecurity and the Minister for Agriculture have full control over when a BIRA will be carried out (Clause 167, (1) & (3)). No provision is made for appeal, review or updating of BIRAs – a procedure in which the Department has previously been found to be lacking.

Chapter 3, Part 2.

Clause 169

A lack of provision for the independent review of BIRA scientific content is evident. Specifically, Chapter 3, Part 2 Clause 169 (Process for conducting a BIRA), in no way emphasises the importance of scientific rigor during the BIRA process. In reading the Bill, neither the proposed legislation nor the accompanying explanatory memorandum makes mention or provisions for the Director of Biosecurity to decide whether or not to convene a panel of experts during the development of a BIRA. There is also no directive concerning whether or not the Director of Biosecurity must abide by recommendations from an expert panel or take expert advice into account during the BIRA process.

This represents a failing of the Biosecurity Bill 2014. Given the importance previously attributed to the Eminent Scientists Group during the IRA process, the lack of information concerning the role of scientific experts during the development of a BIRA is surprising and requires review.

With this in mind, it is concerning that there is no compulsion for scientific rigour in developing a BIRA within the Biosecurity Bill 2014. As the primary legislation that may dictate the framework for Australia's future biosecurity system, an emphasis on rigorous analysis should be a key focus in Chapter 3 of the Bill.

In addition, the requirements for transparency during the BIRA process, as set out in Chapter 3, Part 2 (Clauses 165-170), are minimalistic and vague. For example, Chapter 3, Part 2 Clause 169 only requires that BIRA guidelines for a specific import product be published on the Departmental website in order to fulfil obligations of consultation and transparency. It is AUSVEG's view that the bar must be set higher in regards to consultation and transparency during the BIRA process. Additionally, there is also no information in the proposed legislation regarding time frames for stakeholder consultation following publication of a draft or provisional BIRA. Omission of this information effectively ignores the important role that stakeholder submissions play during the BIRA process.

Chapter 3, Part 2.

Clause 170

The explanatory memorandum for Chapter 3, Part 2 Clause 170, which details requirements for the Director of Biosecurity to prepare draft, provisional and final BIRA reports, states that:

"The decision to grant the import permit is made using a variety of information, including, but not limited to, information contained in the BIRA report."

In this instance, 'variety of information' is ambiguous and should be clarified.

Chapter 3, Part 2.

Additional comments

Following AUSVEG's review of the proposed legislation, we believe there is a clear lack of emphasis on transparency to stakeholders in the Bill. Part 2 (Clauses 165-170) does not include any requirement for the Director of Biosecurity to provide stakeholders with the reasoning behind decisions for either having *or not having* a BIRA. On the same line, there is no requirement outlined in the proposed legislation for the Director of Biosecurity to provide reasoned and public responses to legitimate issues raised during the preparation and comment process. Despite ongoing discussion concerning the Department's need for greater transparency to stakeholders, there is nothing in the Biosecurity Bill 2014 ensuring that this issue will be addressed in regulations if the Bill is passed.

It is also noted that there is no legislative provision for a compulsory review of BIRAs. In light of the GCMMV outbreak, whereby the Department had failed to act on the biosecurity risk of

CGMMV seed-based transmission across the border despite the available evidence, it is clear that some form of regular review must be mandated through legislation to ensure that statements such as the one listed below, which are routinely included in IRAs, are followed:

"The Australian Department of Agriculture continually reviews information relevant to pests and diseases of quarantine concern. If any new scientific information or evidence from stakeholders indicates that current biosecurity measures are not adequate, then they may be reviewed (as outlined in section 5.4 of the report)." (Final IRA for fresh salacca fruit from Indonesia report, Australian Department of Agriculture, 2014).

Chapter 3, Part 3

Prohibited Goods etc.

Clause 173

Greater clarity is required around the use of 'risk assessment', e.g. Clause 173 (4). It is assumed but not stated that 'risk assessment' as used in Clause 173 is a generic term and does not imply a BIRA. The meaning of 'risk assessment' in the context of the biosecurity system should be included under Definitions.

Chapter 3, Part 3.

Clause 178

Decision-making periods are not appropriately defined in the proposed legislation. For instance, Clause 178 (3) stipulates that the Director of Biosecurity must make a decision concerning import permit applications within *the decision-making period.* If the Director does not make a decision within this period, the Director is taken to have refused the permit. The open ended nature of the decision-making period is an issue that requires clarification. There is no stipulation regarding a time frame in which an assessment must be carried out, and according to the explanatory memorandum, Clause 178 makes provisions for the Director of Biosecurity to define this period based on expected risks associated for that product:

"… the Director of Biosecurity must make a decision in relation to an import permit application within a decision-making period prescribed by the regulations for an application of that kind. This allows the Director to identify a specific period of time in which a category of applications must be considered. This is required because of the broad range of biosecurity risks posed by imported goods and the various conditions required to manage the risks to an acceptable level. Some applications will be straight forward and require a shorter consideration period. Others will cover goods which pose different levels of biosecurity risk and require a longer decision-

making period for the Director to consider whether the biosecurity risks can be managed appropriately."

This explanation implies that the decision-making period will be based on the length of time needed to assess the risks of imports. If this is the case, estimating a decision-making period based on expected risks is counterintuitive, since it is the aim of a risk assessment to identify and investigate these risks in the first instance.

In addition, Clause 178 Section 4 (b) (ii) requires clarification as there are too many references to 'periods' for this Clause to make sense.

Chapter 3, Part 3.

Clause 184

AUSVEG notes that in some instances the explanatory notes do not match the proposed legislation. For example, in Chapter 3, Part 3 Clause 184 of the Bill, there is no reference to the notification of stakeholders regarding suspension of import permits. However, in the explanatory memorandum (Chapter 3, Part 3 – Division 2, Clause 184) a process for notification is in fact included:

"Permit holders will be directly notified in writing that permits have been suspended. In addition to directly notifying affected import permit holders, a public notification will usually be published on the import condition database (currently ICON) and through an industry notice both published on the Agriculture Department website and distributed to major stakeholders."

In the interests of consistency and production of a robust legislation, requirements for notification of stakeholders should be included in the proposed legislation and matched accordingly in the explanatory memorandum.

Chapter 10, Part 6

Ministerial reviews

Clause 567

The lack of provisions under Chapter 10, Part 6 Clause 567 to ensure independence of a Ministerial delegate charged with conducting a review of the biosecurity system raises another point of concern. Indeed, throughout the proposed legislation there are no provisions for an independent audit of the system that is completely discrete from the Department of Agriculture. The explanatory memorandum for Clause 567 states that:

"… as the review powers are provided to the Minister, reviews will be conducted independently from the Department, ensuring independence between the subjects of the review (biosecurity officials) and the powers of the person conducting the review."

However, as the powers for conducting a review into the biosecurity system lie with the Minister for Agriculture and may be conferred by the Minister for Agriculture, this cannot legitimately be described as an independent review process.

AUSVEG also notes that there is nothing in Chapter 10, Part 6 Clause 567 or elsewhere in the legislation to address Conflict of Interest.

Inspector General of Biosecurity

AUSVEG notes that all references to an Inspector General of Biosecurity have been removed from the Biosecurity Bill 2014. Presumably this role as a statutory position will not go forward and therefore, there is no provision for a review of process, science, or any other operational aspects of the Department.

As it stands the Department is not subject to any form of mandated review. This is a retrograde step and only serves to reinforce the impression that the Department does not want any meaningful dialogue with industry unless it is on their terms.

References

Beale, R, Fairbrother, J, Inglis, A and Trebeck, D (2008) *One biosecurity: A working partnership,* Commonwealth of Australia, Canberra.

Australian Department of Agriculture (2014), *Final import risk analysis report for fresh salacca fruit from Indonesia*, Department of Agriculture, Canberra. Viewed (11 Jan 2015), <http://www.agriculture.gov.au/SiteCollectionDocuments/ba/ira/final-plant/salacca-indonesia/final-ira-fresh-salacca-fruit-indonesia.pdf>

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Submission for the Inquiry into the Biosecurity Bill 2012 and the Inspector-General of Biosecurity Bill 2012

1. About AUSVEG

AUSVEG is the National Peak Industry Body representing the interests of Australian vegetable and potato growers. We represent growers around Australia and assist them by making sure the National Vegetable Levy and the National Potato Levy are invested in research and development (R&D) that best meets the needs of the industry.

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Yours sincerely

Richard J Mulcahy

AUSVEG Submission - Reform of Australia's biosecurity system

Introduction

AUSVEG has welcomed the opportunity to comment on what is comprehensive and overdue update on the proposed new Biosecurity Legislation.

This legislation also provides an ideal opportunity to remedy some of the deficiencies in the current system and provide a basis for a strong Federal Government/State and Territory Government/industry partnership. Many of the deficiencies in the current system appear to have been addressed, however, there are some particular areas where we believe some further work and clarification is required.

Of the 12 chapters that comprise the total package plus the Inspector-General of Biosecurity Bill there are five chapters which we believe are requiring further attention/modification. These are Chapters 1, 3, 7 and 12. The Inspector-General of Biosecurity Bill also merits comment.

We welcome the creation of the Inspector–General Biosecurity as we believe such a position is long overdue, however, he Bill in its current form misses an opportunity to address several major deficiencies in the current biosecurity system.

It is worth noting that to the frustration of the industry little change to the legislation has been made after receiving comments from the original call for submissions on the Bill. This is not only disrespectful to the authors who have committed time to making submissions in the consultation process but also invites oversights with unintended consequences in the regulations.

Comments on DAFF's Consultation Process

AUSVEG has been extremely disappointed with the method of consultation provided by the Department of Agriculture, Fisheries and Forestry and more generally the way they provide feedback on all calls for comment.

During the original consultation with industry when the Bills were being drafted, industry was invited to briefings on the Bill and opportunities to read the documents. At these briefings chapters of the 500 page Bill were handed out for perusal but no copies were permitted to be taken home, notes to be taken or telephone calls to confer with others were to be made. Many commentators expressed their frustration at the secrecy in which the document was being prepared and how industry was not being given proper opportunity to examine the document and provide more complete feedback in these initial stages.

Further compounding those issues were the delays in which Chapters of the Bills were released. Chapters critical to the plant industry were continually delayed all the while the Government holding to a firm timetable and a deadline for comment. Only after public pressure from AUSVEG did the Department relent on its comment deadline and extend it to one month after all Chapters of the Legislation had been released.

The frustration of AUSVEG and its peers in the Horticulture sector has been DAFF's approach to consulting with industry. The Explanatory Memorandum for the Biosecurity Bill is 410 pages long and its accompanying Bill, the Inspector-General of Biosecurity Bill is a further 99 pages long, totalling more than 500 pages of explanation plus the Bills themself. The frustration of industry was at the initial time provided to digest the volumes of writing but more so was the difficulty to discern where changes by DAFF had been applied. Summary documents of industry concerns had been compiled by DAFF and written into formalised documents but there were no annotated versions of the explanatory memorandums provided to the public which would have made the process substantially easier for industry to work with the Department on developing the best policy possible.

It is a suggestion that the Committee consider recommending to DAFF that it implement methods to better facilitate consultation with industry, particularly on Bills as substantial as the Biosecurity Bill.

Comments on the Biosecurity Bill 2012

Chapter 1

The placing of policy and also references to international agreements as part of the definitions appears risky. We are concerned that this exposes Australia to excess scrutiny from the WTO as well as placing our legislation at the mercy of unelected personnel who negotiate and make International Agreements.

It is our belief that this is abrogating our independence to other authorities and potentially placing the country at the whim of bodies over which we have no control.

Chapter 3

(a) Import Risk Analysis

The area of Import Risk Analysis is of great concern. The legislation will merely enshrine current practice which has been shown to have many flaws.

There appears to be nothing in this chapter that ensures any change to the current system or process. The issue of risk determination is not covered and thus the current system is apparently to be continued.

The ability to have independent reviews only extends to the process not the content. Thus, the position of Inspector-General is little more than window dressing in this context.

The review of decisions etc. rests within the body that made the decision in the first place. This is unacceptable and is out of step with both legal and scientific practice relating to review and appeal.

(b) Importation Decisions

The same comments apply here as for BIRA. Thus, the current status quo would appear to be largely maintained. There appears to be nothing in the proposed legislation that would bring any change to the current situation.

Chapter 7

Approved arrangements

No definition is provided as to what is fit and proper person. The explanatory notes mention an audit model. There is no mention of audit or anything similar in the draft! What is intended here?

Chapter 12

Miscellaneous including costs

The issue of cost recovery makes no mention of the Deed or how this or a similar instrument would be covered under the new legislation. This needs to be addressed.

The Deed is an important instrument and we believe this needs to be acknowledged in the legislation and certainly as various International Agreements are referenced in Chapter then so should the appropriate domestic agreements also be integrated.

There is also no mention as to how cost-recovery for additional on-shore biosecurity will be covered or dealt with.

Inspector-General of Biosecurity Bill

An opportunity to seriously address current deficiencies in the system is being lost with the Bill in its present form.

This position should be independent of DAFF and should be provided with powers to permit investigation not only of process but also content and rigour of DAFF work. Precedent would suggest that his type of position should be located within the Ombudsman's office. It should not be within DAFF.

Lastly, there is nowhere in this Bill or the legislation that provides for comprehensive audit of DAFF performance. Whilst the Inspector-General Bill goes part of the way to address this function we believe a stronger and more comprehensive process is required.

Detailed Comments

Chapter 1

This sets out the framework for the legislation. In this chapter the appropriate level of protection is defined as below:

"PM25 Appropriate level of protection (ALOP) for Australia against biosecurity risks
The ***Appropriate Level of Protection*** (or ***ALOP***) for Australia is a high level of sanitary and phytosanitary protection aimed at reducing biosecurity risks to a very low level, but not to zero.
Note 1: This section is in accordance with Australia's rights and obligations under the SPS Agreement.
Note 2: The Director of Biosecurity must apply the ALOP for Australia in conducting a BIRA or risk assessment in relation to the importation, or proposed importation, of particular goods into Australian territory (see subsection ^GA55(5) and section ^MG170)."

We believe that this should not be in the legislation without further qualification and definition. What is meant by very low? Who 'owns' the definition of very low? What happens if the definition is changed? There may be implications here for Australia for challenges in the International Arena on this definition if it is in the legislation. We believe that we ought to own our definitions for our legislation.

The reasons for this definition and including it in the legislation are given in this extract from the explanatory notes:

"The World Trade Organization (WTO) 'Agreement on the Application of Sanitary and Phytosanitary Measures' (SPS Agreement) contains the basic rules on food safety and animal and plant health standards for trade between WTO member countries. The SPS Agreement requires that sanitary and phytosanitary (biosecurity) measures are based on science and applied only to the extent necessary to protect human, animal or plant life or health. The SPS Agreement allows WTO members to determine their own level of protection; however, it must be applied in a consistent manner. This is known as the Appropriate Level of Protection (ALOP).

The Australian Government, with the agreement of all states and territories, has expressed Australia's ALOP as "providing a high level of sanitary and phytosanitary protection, aimed at reducing risk to a very low level, but not to zero". When performing a function or exercising a power under the Biosecurity Import Risk Analysis process and risk assessments conducted for the importation of particular goods into Australia, the Director of Biosecurity must apply Australia's Appropriate Level of Protection.

This policy reflects community expectations and provides for a high standard of biosecurity that reduces risk to a very low level. It recognises that a zero risk stance is impractical as it would mean no tourists, no international travel and no imports.

Consistent with the SPS Agreement, Australia bases its biosecurity measures on international standards such as those developed by the World Organisation for Animal Health, the International Plant Protection Convention or Codex Alimentarius where they exist and where they achieve Australia's appropriate level of protection from pests and diseases of biosecurity concern. Where such standards do not achieve Australia's ALOP, or relevant international standards do not exist, Australia exercises its right under the SPS Agreement to apply measures, justified on scientific grounds and based on a risk assessment, to achieve Australia's ALOP.

Australia's ALOP is currently; expressed administratively. Australia's ALOP will be included in the Bill for several reasons. Importers and trading partners will have additional certainty of the standard that is being applied. It will also increase transparency in its application when assessing biosecurity risks."

The last paragraph is hyperbole and makes no sense. We believe that including ALOP in this manner merely leaves Australia more vulnerable under the WTO system. Part of the current problem with the existing BRA system is the anomalous way that risk is defined and dealt with. As explained by senior Biosecurity Staff, this situation is a direct result of our submission to WTO guidelines.

Our commitments to the international Biodiversity Convention are also enshrined in the new legislation and the same comments apply.

There are also other areas that are defined by international agreements within the table of definitions. This extends to the application of WTO guidelines and annexes such as the following:

***"SPS Agreement** means the Agreement on the Application of 17 Sanitary and Phytosanitary Measures set out in Annex 1A to the World Trade Organization Agreement."*

We can only re-iterate our concerns as expressed above. To-date we have been unable to extract any meaningful explanation as to both the implications and reasons for this direction in the legislation.

On a more general note it is our understanding is that once any form of legislation is passed it can be subject to scrutiny from the WTO and other international agreements. This may also be the case for non-legislation (i.e. regulations etc.). Nonetheless, where aspirations and aims are placed into legislation then we need to look at what the implications are that flow on from this. To-date there has been very little clarification from DAFF on this point and it needs addressing.

Chapter 3

This review only considers the area of Biosecurity Import Risk Analysis which is covered in the second part of the legislation from page 37 onwards.

This specifically excludes the Minister from having any powers over the process other than being able to direct it. In principle there is nothing wrong with this, however, there is no provision for a review process other than via the Inspector-General. The deficiencies in what is proposed in this area have been covered in detail elsewhere.

The process is not covered in the legislation but we assume will be defined in Regulations which have not yet been published.

We note the following:

"The Director must apply the ALOP for Australia in conducting the
13 BIRA (see paragraph ^GA55(5)(a)).

ALOP is defined in GA (55)(a) as:

"The Director of Biosecurity must apply the ALOP for Australia in conducting:
(a) a BIRA in relation to particular goods; or
(b) a risk assessment for the purpose of determining whether particular goods, or a particular class of goods, can be brought or imported into Australian territory and, if so, whether this should be subject to conditions.
Note: Part 2 of Chapter 3 (managing biosecurity risks: goods) deals with BIRAs in relation to particular goods and Part 3 of that Chapter deals with prohibited goods and conditionally non-prohibited goods.

This is not that helpful and merely defines the circumstances under which a BIRA may be implemented.

In order to further try and understand what is involved we have referred to the explanatory notes on the DAFF website. For the purpose of making it easier for the reader to follow we have placed the quotations from the Explanatory Notes in italics and written our concerns in standard and coloured font immediately adjacent to the relevant quotation.

The explanatory notes make the following points:

"The Director of Biosecurity may initiate a BIRA as directed by the Agriculture Minister or upon the proposal of a person wishing to import plants, animals or goods into Australia. The Director of Biosecurity must commence a BIRA if requested to by the Agriculture Minister, but has discretion over whether any other BIRA process is commenced.

The regulations outline an eight step process that must be followed in conducting a BIRA:

1. The Director of Biosecurity publishes a public notice on the department's website stating that a BIRA process will commence and whether an issues paper will be prepared.

We note there is no formal requirement to notify affected parties. This is unacceptable and yet this is one of the currents issues of concern from industry in how DAFF currently operates. It is unacceptable that affected industries/parties often first here about DAFF activities from overseas trading partners and countries rather than from our own Government.

2. If an issues paper is released, it is published on the department's website and the public has a minimum of 60 days to consider the paper and provide submissions (issues papers set out issues relevant to assessing the level of biosecurity risk for a proposed importation. They are released when the Director of Biosecurity considers there are significant issues that need to be explored and raised formally with the public).

There is no formal requirement for public release. We believe public release should be the default option, however, non-release should be permitted subject to publicly released grounds for so doing.

3. If an issues paper is released, the Director of Biosecurity must consider any submissions received from the public when preparing a draft BIRA report. Submissions will not be specifically addressed in the report if they are outside of the scope of the BIRA or not supported by scientific evidence.

This is no change from the current situation and it is unacceptable. There is no provision for who makes the judgment on what is scientific evidence nor is there any definition as to what constitutes scientific evidence. This needs to be addressed in the Bill, particularly as current experience suggests that the term is applied rather elastically by DAFF. This is an area of particular concern to industry yet it is not addressed.

4. The Director of Biosecurity prepares a draft BIRA report and publishes it on the department's website. The public has a minimum of 60 days to consider the draft report and provide submissions.

We believe there should be formal notification, enshrined in legislation, to bodies as to when a report is available. There also needs to be provision for extension of the sixty days to a maximum of 120 days, where circumstances warrant, such as excessively complex issues, availability of relevant personnel to make or prepare expert submissions etc. Given that the whole time period has a finite time-frame of 30 months it would seem unreasonable to place potentially limiting time constraints on affected parties when the requirement on the Department is less. An evenhanded approach is required here.

5. The Director of Biosecurity must consider any submissions received from the public when preparing a provisional BIRA report. Submissions will not be specifically addressed in the report if they are outside of the scope of the BIRA or not supported by scientific evidence.

6. The Director of Biosecurity prepares a provisional BIRA report and publishes it on the department's website.

Our previous comments regarding notification apply here as well.

7. At step 7, the BIRA process is open to review by the Inspector-General of Biosecurity (IGB) if an appeal is made on valid grounds by a member of the public, within an appeal period of 45 days (see the Inspector-General of Biosecurity Bill for further information).

In our opinion this only partly addresses issues within DAFF in this area and is a long way short of what is required. We believe that if this process is to have real meaning and acceptance by all parties then any review should be independent of DAFF and should be provided with powers to permit investigation not only of process but also content and rigour of DAFF work. This should also be independent of DAFF and a procedure to which DAFF would have exactly the same rights as Industry. The system at present where the one body acts as judge, jury, reviewer and executioner is at odds with due process. It is certainly not independent.

a. *If an appeal is lodged, the Director of Biosecurity must give the provisional BIRA to the IGB for review. The IGB will have 45 days to review the BIRA process only (not the merits or scientific basis of the decision.*
b. *If no appeal is made on valid grounds within the 30 day review period, the Director of Biosecurity can publish the provisional BIRA report as a final BIRA report.*

This is a completely unacceptable set of principles and our comments immediately above apply here. There is no provision in this procedure to cater for sub-standard work from DAFF. There is no visible independence in the review process and it is our belief that without fundamental reform to this part of DAFF's operations, the current conflicts that exist between DAFF and industry will continue. No entity should be beyond scrutiny for both the quality of its work and its procedures. Furthermore, the assessment of performance should not rest within the same body. This does not occur in law nor does it occur in science.

8. If the IGB has reviewed the provisional BIRA report, the Director of Biosecurity must consider any comments made by the IGB before publishing the final BIRA report.

In this context, submissions should be given the option of being public or private and where public then the DAFF response should also be public and available. This would ensure a transparent process and one which would remove much of the current distrust that exists in the current system.

"BIRA report

The BIRA report must contain the findings of the BIRA and the evidence or materials on which the findings are based. A BIRA report may also identify conditions that must be met in order for the risks identified with the proposed importation to be reduced to a level that achieves Australia's ALOP. For example, timber products may be required to be debarked and undergo a Department-approved heat treatment before they can be imported."

It is our contention that a BIRA be accompanied by a HACCP table that identifies all the potential risk points in the handling chain and provides appropriate mitigation measures. Such a table is standard industry practice for managing risk, provides both a management and audit tool and also provides for future changes in a system. It also improves transparency and removes a lot of the uncertainty out of the current system. A HACCP approach would provide for a more workable and accountable system than exists at present.

Termination of a BIRA

A BIRA can be terminated at any time if the proposer notifies the Director of Biosecurity in writing that they no longer wish to proceed, if the Director has requested additional information but determines there is insufficient information to complete the BIRA satisfactorily or, if the BIRA is initiated by the Director, at the Director's discretion.

Before a BIRA can be terminated, the Director of Biosecurity must notify any proposer in writing of the progress of the BIRA and why it can't be completed. When a BIRA is terminated, the Director of Biosecurity must publish a notice on the department's website.

See our earlier comments regarding notifications.

We would also like to see a change to risk definition within the sphere of BIRA and Import regulations. It is our understanding that under the current situation, whereby if no data exists on the likely risk of a new organism in a new environment, then risk is assessed as zero. This is both unscientific and also completely out of step with risk management procedures. This is related to the difference between absence of evidence and evidence of absence.

Chapter 7

We would like to see a definition of a “fit and proper person”.

Chapter 12

Costs and cost sharing

Under the new legislation the Federal Government can now issue Biosecurity Control Order to destroy crops or goods, however, it is not clear who will foot the bill for it if they do. In discussions at the information sessions we were provided with no clarification on this issue nor how this will fit in with the Deed.

We believe that this area demand addressing in the legislation. The Deed is an important instrument and we believe it needs to be acknowledged in the legislation. As various other International Agreements are referenced in Chapter 1 then we see no reason why the appropriate domestic agreements should also not be integrated into the legislation.

Inspector-General

We have made mention at numerous points above regarding this Bill and we re-iterate them here.

This Bill does not go far enough. We believe that if this Bill is to have real meaning then any review should be independent of DAFF and should be provided with powers to permit investigation not only of process but also content and rigour of DAFF work. Precedent would suggest that his type of position should be located within the Ombudsman’s office. There is no provision in this Bill to deal with sub-standard work from DAFF. There is no visible independence in the review process and it is our belief that without fundamental reform to this part of DAFF’s operations the current existing conflicts between DAFF and industry will continue. No entity should be beyond scrutiny for both the quality of its work and its procedures. Furthermore, the assessment of performance should not rest within the same body. This does not occur in law nor does it occur in science.

Lastly, we believe that the Bill should require that DAFF performance should be subject to independent audit and operate under the same set of principles that are used for determining industry performance.