

SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE INQUIRY
AGRICULTURE LEGISLATION AMENDMENT (STREAMLINING ADMINISTRATION) BILL 2019

Submission: Department of Agriculture

Background

The Agriculture Legislation Amendment (Streamlining Administration) Bill 2019 (the Bill) will make amendments to the *Biosecurity Act 2015* (the Biosecurity Act) and the *Imported Food Control Act 1992* (the IFC Act) in order to strengthen Australia's biosecurity and food systems. It is intended to:

- ensure that there is a clear statutory basis for the application of automated decision-making under the Biosecurity Act
- enable wider use of automated decision-making to issue biosecurity directions and notices for imported food control certification
- enable the Secretary of the Department of Agriculture, who is also the Director of Biosecurity (the Secretary), to determine, by a legislative instrument, which biosecurity officer decisions under the Biosecurity Act may be made by operation of a computer program
- authorise the Secretary to arrange for automated decision-making for certain sections of the Imported Food Control Act

The types of decisions that are intended to be automated are those which have limited if any scope for discretion. Biosecurity officers will continue to be responsible for decisions that are not suitable for automation, such as those that require an evaluation of information, and will retain the ability to substitute an electronic decision where it is appropriate to do so.

The amendments are intended to improve the efficiency and effectiveness of the Biosecurity Act to ensure Australia's biosecurity system continues to keep pace with the changing biosecurity environment. This is particularly crucial in the current environment, where intensive resources are necessary to prevent incursions of high risk pests and diseases, such as such as African Swine Fever Virus (ASFV) and Brown Marmorated Stink Bug (BMSB). Use of automated decision-making allows risk identification and management across a large number of goods and conveyances, and ensures that resources are optimised for effective management of existing and emerging risks.

Principal issues for consideration:

- 1) *To investigate the impact of the bill on current biosecurity systems and imported food requirements.*

The Bill proposes to have a positive impact on current biosecurity systems and imported food requirements.

The Bill will assist the efficiency and effectiveness of Australia's biosecurity system by clarifying legal authority for automated decision-making for decisions made by biosecurity officers under the Biosecurity Act and authorised officers under the IFC Act. Enabling automated decision-making for specific decisions will support deregulation and improve the

effectiveness of the biosecurity framework and imported food system, as well as lessen the administrative burden on industry and small business. It will also help protect Australia's pest and disease status by reducing the need for manual handling of high-volume but routine decisions, enabling resources to be targeted to addressing critical risks.

While initially the Bill will not have a noticeable impact on stakeholders, in the longer term, the impact will be positive as regulation is anticipated to become more efficient through the use of new technology.

The impact of the Bill on current biosecurity systems and imported food requirements is to clarify the legislative basis for the Department to issue directions to importers and brokers arranging the entry of goods and imported food into Australia through the use of automated decisions. Providing for automated decision-making will ensure decision tools can be implemented as efficiently as possible, with minimal impacts on importers. The Bill also provides the scope for the Department to look for more efficiencies in the future, which will lead to more focused regulation and faster clearances for low risk goods.

The Bill will enable the Secretary to determine by legislative instrument the provisions of the Biosecurity Act under which decisions may be made by the operation of a computer program. The Bill also identifies the provisions that could be considered for inclusion in the legislative instrument. As the legislative instrument is not exempt from the disallowance process, Parliament will be able to scrutinise the Secretary's determination as to which decisions will be subject to automated decision-making, ensuring there is transparency of the use of these powers.

The use of a legislative instrument to determine the decisions to be subject to automated decision-making may also provide flexibility for future technological and system developments, meaning that the Bill is expected to provide a platform for immediate and ongoing improvement in regulatory decision-making.

The type of decisions to be subjected to automated decision-making are those of a scientific or technical nature and based on objective data and information. Examples include decisions based on the type of goods, the associated diseases or pests of concern, whether there are current outbreaks or prevalence of the disease, and their locations. Due to their scientific and technical nature, these types of decisions involve the application of detailed business rules, and generally involve limited discretion even when the decision is made by a human decision-maker. The nature of and limited discretion involved in these kinds of decisions makes them appropriate for the application of automated decision-making. Automated decision-making in these circumstances may also provide certainty of outcomes and faster clearance, which is desirable for stakeholders in this regulatory context.

The Bill also provides further safeguards by enabling a biosecurity officer under the Biosecurity Act and an authorised officer under the IFC Act, to substitute their own decision where the biosecurity officer or authorised officer is satisfied that the automated decision is not consistent with the objects of the Act, or another decision is more appropriate in the circumstances. This allows biosecurity officers and authorised officers to correct any system or data input errors, or to respond to changed circumstances or new information becoming available.

The Bill ensures that there is a clear statutory basis to support applications of automated decision-making, to, for example, issue biosecurity directions to importers under the

Biosecurity Act. The Department is processing on average 45,000 commercial cargo referrals each month. It is therefore critical to optimise operational efficiencies to manage the significant biosecurity risks posed by this volume of imports. The Department is striving to be as efficient as possible in this environment, particularly with increased workloads for seasonal high risk pests such as BMSB, and accelerating intervention to prevent ASFV.

2) *Any additional charges or savings associated with the amendments*

Providing an automated decision-making process will enable more efficient biosecurity and imported food management systems, including potential future savings from employing future technological developments to effectively manage large workloads. As such, it is not anticipated that there will be any change in cost associated with these decisions.

3) *Impact on biosecurity staff*

Automated decisions will free-up biosecurity staff to allow them to focus on large amounts of inspections, especially while high risk pests and diseases such as BMSB are in season.

The amendments proposed in the Bill will support our biosecurity system to function efficiently and effectively, and mitigate against increase in costs and/or time delays for imports crossing our borders. During the 2018-19 BMSB season, biosecurity officers in Assessment Services worked approximately 14,000 hours overtime hours, which is unsustainable but only expected to grow. Enabling automated decision-making will help to ease this pressure, and there will be no reduction in staffing levels as a consequence of these amendments.

Biosecurity officers will still have to be responsible for decisions that are not suitable to be automated, such as those that require interpretation or evaluation of evidence; where fact finding or weighing evidence is required. These would include, for example, directions to order goods for destruction or for a conveyance to be ordered not to enter Australia.

Under the Bill, a biosecurity officer may make a decision in substitution for an electronic decision if a biosecurity officer is satisfied that the electronic decision is not consistent with the objects of the Biosecurity Act or another decision is more appropriate in the circumstances. This enables a human decision maker, that is, a biosecurity officer, to rectify any errors that may have been made.

4) *Any other related matters.*

None