

**HORTICULTURE AUSTRALIA COUNCIL LTD**

**Submission to**

**Joint Committee of Public Accounts and Audit  
Review of Australia's Quarantine Function**

*6 June 2002*

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# 1. Introduction

Australia has an environment which, compared with many other countries, is relatively free from many harmful pests and diseases of plants, animals and humans. This status gives Australian industry a very real trading advantage with significant economic benefits to Australia as a whole.

Australia's quarantine function aims to deliver protection from the establishment or spread of human, animal or plant diseases. Incursions of exotic pests and diseases continue to be a major threat to Australia's primary production and exports, public health and its native plants and animals

Quarantine services are primarily the responsibility of the Department of Agriculture, Fisheries and Forestry – Australia (AFFA) where Biosecurity Australia (BA) manages quarantine policy and the Australian Quarantine and Inspection Service (AQIS) manage quarantine operations. Product Integrity Animal and Plant Health (PIAPH) handle post border matters such as incursions and outbreaks.

Australia's geography and terrain make the task of controlling or eradicating an exotic pest or disease outbreak extremely difficult and expensive. As a consequence, quarantine systems and arrangements need to be designed to avoid or at least minimise the risk of pest and disease incursions. In this way, the need to apply costly and difficult control and eradication programs may be avoided.

In recent years a number of major reviews and incidents have influenced the direction of the quarantine function. These include the 1996 Quarantine Review: *Australian Quarantine -A Shared Responsibility* (chaired by Professor Malcolm Nairn); the 2001 ANAO Report: *Managing for Quarantine Effectiveness*; and the Government's response to the outbreak in February 2001 of foot and mouth disease (FMD) in the United Kingdom and Europe.

The 1996 'Nairn' Review recommended a fresh approach to quarantine by way of the following:

- Managed risk based on science;
- A continuum of quarantine (pre-border, border, post border);
- Shared responsibility (Government, industry and the community);
- Consultative decision making;
- External input to quarantine policy; and
- Enhanced capacity in plant and fish quarantine protection and policy.

The June 2001 ANAO Report 47, *Managing for Quarantine Effectiveness*, found that, as a result of actions taken on the Quarantine Review Committee report "quarantine operations were now markedly more effective across the board but that there remain weaknesses in management of the quarantine function, which need to be addressed to improve operational effectiveness and quarantine outcomes."

HAC is aware that AFFA as implemented many of the recommendations of the ANAO report, through greater emphasis in a number of areas including:

- Extending and improving the risk assessment process
- Improving border controls
- Establishing an integrated and systematic risk management framework
- Improving the use of quarantine risk profiles

- Strengthening pre-border cargo activities, and
- Improving effectiveness indicators.

Notwithstanding the initiatives undertaken, HAC seeks to reinforce its core policy position for quarantine and biosecurity (see appendix b) by responding to the key issues raised in the terms of reference for the review of Australia's Quarantine Function by the Joint Committee of Public Accounts and Audit (JCPAA).

The horticulture industry remains supportive of the fullest application of the Nairn recommendations as an underlying philosophy for Australia's quarantine function.

## 2. Executive Summary

- **HAC's strategic goal for quarantine and biosecurity is for the:**

- Protection of Australia's agricultural resources from entry, spread or establishment of unwanted pests and diseases which may cause economic, environmental or social damage
- Maximisation of market access opportunities for horticultural exports.

- **Coordination of AQIS with other Border Control Agencies**

HAC supports maximum coordination between border control agencies and all other support agencies to ensure efficient and effective delivery of border control outcomes

- **Identification of potential risks to Australia & application of to meet these risks**

HAC recommends that:

- Risk identification and assessment measures should be independently developed and applied consistently across programmes and between the different modes of entry
- Industry is consulted with respect to the development and application of such assessments.
- AFFA resource allocation is directed to the areas of greatest risk
- Industry be consulted and encouraged and assisted to participate in the processes of government, which focus on planning for incursion readiness.

- **Impact of international agreements on quarantine activities – including any free trade negotiations**

- HAC believes the issue of ALOP needs to be reviewed by Government in a transparent and consultative process with industry.
- That any FTA must not in any way dilutes or diminishes the principle that quarantine matters be based on pure scientific assessment.
- That industry be kept fully informed of any changes to existing international agreements.
- That Government remain ever vigilant in opposing the application or use of non- tariff barriers to restrict trade in horticultural products

- Horticulture would support a greater degree of harmonisation of quarantine standards with extensive industry consultation as part of the process.
- **Operations of AQIS beyond Australia's borders**
  - HAC supports expanded efforts by AFFA in its pre border preventative programmes.
  - HAC is particularly concerned about the risk situation to Australia through northern regions and seeks increased resourcing to expand the reach of existing programmes.
  - HAC supports expanded Australian investment into near countries in areas of capacity to diagnose, control and eradication of major pests and diseases where appropriate.
  - HAC would see it as appropriate for a general review of the effectiveness and response mechanisms of the existing NAQS program including the incorporation of specific targeted outcomes such as 'no new pest of disease for the next, say, three years'.
- **AQIS Border Operations**
  - That AQIS expands current effort for the collection of appropriate data for the development of risk assessment profiles at the border level to ensure greater effectiveness of control outcomes.
  - That expanded consultation between industry and the HECC takes place on matters of consideration and decision.
- **Monitoring & surveillance within Australia for breaches of the quarantine barrier**
  - HAC supports the continued if not expanded role that AFFA is playing in the coordination of monitoring and surveillance at a national level, in close partnership with the States and Territories.
  - HAC seeks a clear commitment from Government on matters covering community, industry and government responsibilities including funding in the event of incursion incidents.
- **IRA development**
  - While HAC welcomes the refinements to the IRA process, however there are residual concerns about the degree and timing for access to the public file for IRA information.
  - HAC urges streamlined communications to all stakeholders including State and Territory Governments.
  - HAC would urge the formalisation of the 'Technical Working Group Process' as part of the overall IRA process.
  - That Government prepare a full social, economic and regional impact statement before any decision is taken with respect to an IRA application.
- **Opportunities to increase public awareness of, & involvement in quarantine issues**
  - HAC supports continued if not expanded funding of the public education/communications programme for quarantine awareness.

- HAC also supports the maintenance of an extensive industry consultation programme to enhance awareness of quarantine developments and responsibilities

### 3. Terms of Reference for Submission

Following issues raised in the Australian National Audit Office (ANAO) Audit Report 47, 2002 – 01, Managing for Quarantine Effectiveness – Department of Agriculture, Fisheries and Forestry – Australia, the JCPAA is to review the efficiency and effectiveness of the quarantine function.

HAC will respond to the terms of reference set for the Committee in the following areas:

- Coordination of AQIS with other border agencies
- Identification of potential risks to Australia & application of resources to meet these risks
- Impact of international agreements on quarantine activities
- Operations of AQIS beyond Australia's borders
- AQIS operations
- Monitoring & surveillance within Australia for breaches of the quarantine barrier
- IRA development
- Opportunities to increase public awareness of, & involvement in quarantine issues

The Committee will conduct public hearings during July, providing stakeholder representatives the opportunity to address the issues under review and investigation.

It will be important for horticulture industry organisations to participate in the public hearings so that individual industry experiences and policy positions can be shared with Committee members.

### 4. HAC – Role and Responsibilities

HAC was formed in 2000 bringing together in a spirit of unity and strength of single purpose, a “federation” of peak industry bodies aimed at representing the broad interests of the Australian horticulture industry on national issues of concern to further the objects of industry.

The Council comprises the following:

- *Snack Fruit Australia Inc*
- *Nursery Industry Assoc*
- *Australian Apple & Pear Growers Assoc*
- *Australian Chamber of Fruit & Vegetable Industry*
- *Australian Citrus Growers Inc.*
- *Queensland Fruit & Vegetable Growers*
- *Australian Vegetable & Potato Growers' Fed*
- *Australian Banana Growers Council*
- *National Citrus Packers Assoc*
- *Australian Nut Industry Council*
- *Australian Passionfruit Industry. Assoc.*
- *Australian Mushroom Grow Assoc Ltd*
- *Central Markets Assoc of Aust*
- *NSW Farmers Association*
- *Australian Fresh Stonefruit Growers Assoc*
- *Australian Avocado Growers Fed.*
- *Australian Banana Growers Council*
- *Cherry Growers of Australia*
- *Australia United Fresh Fruit & Vegetable Assoc*
- *Australia United Fresh Transport*

HAC's five-year vision for Australian horticulture is to develop in co-operation with industry sectors and representative bodies, an industry characterised by:

- Markets that offer profitable and sustainable marketing opportunities for a wide range of differentiated products and services
- Value chain networks and business clusters which deliver products and services focussed on consumer needs
- An ability to profitably accommodate businesses of varying sizes
- Financial viability for businesses
- A strong and extensive human capital base, developing and leveraging the knowledge platform that continues to grow in the industry
- Recognition as being globally innovative and environmentally responsible as a producer of safe food
- A business environment in which business is conducted in a cohesive and co-operative way
- A valuable and increasing contribution to Australia's economy.
- A research and market development base which is strongly market oriented
- A reputation for being people oriented with a strong commitment to skills development and staff training

HAC has strategic goals for a number of key policy areas. For the review of quarantine functions, the key policy drives for HAC is the strategic goal covering quarantine and biosecurity:

- *Protection of Australia's agricultural resources from entry, spread or establishment of unwanted pests and diseases which may cause economic, environmental or social damage*
- *Maximisation of market access opportunities for horticultural exports.*

## **5. Comments and Recommendations**

### **5.1 Coordination of AQIS with other Border Control Agencies**

In recent years, progress has been achieved in the area of coordination between AFFA and the Australian Customs Service (ACS) and this situation has been particularly demonstrated with the outbreak of Foot and Mouth Disease (FMD) in UK/Europe and the Sydney Olympics.

In the May 2001 Budget, increased funding for border surveillance was provided and this saw AQIS and ACS responding to a range of quarantine risks including FMD.

The efficacy of increased border protection activities requires maximum coordination and cooperation between AQIS and ACS.

In addition to the ACS, other Commonwealth agencies form part of the reference network for AFFA in the pursuit of quarantine outcomes.

Extensive working relationships also exist between State Governments particularly in respect to the post border arrangements.

#### **Recommendation**

HAC supports maximum coordination between border control agencies and all other support agencies to ensure efficient and effective delivery of border control outcomes.

### **5.2 Identification of potential risks to Australia & application of to meet these risks**

Management of quarantine involves assessing and managing quarantine risk.

There are two critical elements in risk managing the quarantine function<sup>1</sup>:

- “Determining the risk posed by individual products or substances and deciding whether these goods should be prohibited or subject to specific treatments (in order to achieve the desired level of protection). This is the role of the IRA process and quarantine policy formulation
- Efficiently allocating available quarantine detection and inspection resources so as to minimise Australia's exposure to untreated quarantine risk material, referred to in this report as operational risk management. Operational risk management is primarily about understanding, and treating, varying risks between, for example, international airports and international mail, or even between individual passengers”

In its audit review, ANAO acknowledged that AFFA has recognised the need for its operations to be soundly risk based and administrative structures have been put in place in AFFA for the assignment of risk management plans against each program’s business plan. However, the ANAO has referred to “uneven application of risk concepts, with potential consequences for the management of outcomes”.

ANAO found that:

- “Some programs assessed the consequences of a major pest or disease incursion as ‘extreme’, while others assessed the consequences of the same incursion as ‘very high’, notwithstanding that the impact of an incursion is unlikely to depend on the route of entry
- Programs implemented controls to manage the same risk of incursions to different levels of residual risk. For example, the import clearance program considered that a residual risk rated as ‘major’ to be acceptable, whereas this level of residual risk was not acceptable in seaports and airports. There was no clear reason apparent for accepting varying levels of residual risk between programs; and
- Application of AFFA’s risk approach requires identification and assessment of the risk of disease incursion. The International Mail Program, unlike other programs, does not do this”

Risk determinations carried out by BA have been a source of industry concern due to a lack of transparency of the processes employed to arrive at such judgements.

The horticultural industry is supportive of the Plant Health Australia (PHA) Biosecurity planning initiative as one particular strategy being employed to provide for Australia’s preparedness for incursions. Industry needs to be further encouraged to become participants in the PHA process.

## **Recommendation**

HAC recommends that:

- Risk identification and assessment measures should be independently developed and applied consistently across programmes and between the different modes of entry
- Industry needs to be consulted with respect to the development and application of such assessments.
- AFFA resources are directed to the areas of greatest risk
- Industry is consulted, encouraged and assisted to participate in the processes of government, which focus on planning for incursion readiness.

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<sup>1</sup> ANAO Audit Report No 47 2001-01 Page 54



### **5.3 Impact of international agreements**

Horticulture exports have grown over the years and so Australia's international agreements and obligations have important implications for industry.

Whilst there are a range of agreements which shape influence the nature and direction of Government trade policy, it would be fair to say that the World Trade Organisation (WTO) Agreements have the major influence on quarantine policy and application.

Specifically, the WTO Agreement on Agriculture, the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Dispute Settlement Understanding (DSU) have significant implications for horticulture.

The SPS Agreement prohibits the use of agriculture specific non-tariff measures to distort trade. It also prohibits the use of unjustifiable food safety and quarantine requirements to protect domestic producers from international competition.

A critical issue for quarantine policy is the concept of Appropriate Level of Protection (ALOP).

The issue of ALOP was raised in the context of the review of the Draft Administrative Framework for Import Risk Analysis – A Handbook. In the review reference, AFFA maintained that ALOP was a matter for Government in consultation with the community.

HAC submitted to the review:

*“There is no support in international or domestic law for a requirement of a single ALOP. Industry has concerns about the concept of a single ALOP and seeks far more understanding and clarity about its composition and structure. Prior to determining a final framework for IRA process, Industry asks to be advised of the following:*

- . *Who has determined Australia's ALOP*
- . *When was it determined*
- . *What is the text of the policy as determined by Government?”*

Government has indicated that it is receptive to negotiating Free Trade Agreements (FTA) with major trading partners where the gains can be delivered in a short time frame than otherwise by alternative mechanisms. Any agreement is conditional on their impact spreading across all sectors and it must be WTO consistent.

The issue of harmonisation of quarantine standards is often raised in the context of government-to-government consultations and negotiations. Horticulture would support a greater degree of harmonisation of quarantine standards with extensive industry consultation as part of the process.

#### **Recommendation**

HAC believes the issue of ALOP needs to be reviewed by Government in a transparent and consultative process with industry.

That any FTA must not in any way dilutes or diminishes the principle that quarantine matters be based on pure scientific assessment.

That industry be kept fully informed of any changes to existing international agreements.

That Government remain ever vigilant in opposing the application or use of non- tariff barriers to restrict trade in horticultural products.

Horticulture would support a greater degree of harmonisation of quarantine standards with extensive industry consultation as part of the process.

#### **5.4 Operations of AQIS beyond Australia's borders**

Australia's pre – border operations are designed to recognise and reduce the incidence of pests and diseases in neighbouring countries.

Much of AFFA's pre-border effort is focussed on commercial cargo imports and on raising awareness. In addition, a number of assistance projects are undertaken by Australia to help other countries to develop standards with a view to pest and disease reductions. Such assistance should in no way, reduce Australia's application of the existing regime of quarantine measures.

Equally, AFFA has strategies in place for participation in international organisations, which seek to develop common standards and reduced risks of pests and diseases from overseas.

One of the most critical areas for quarantine policy from a plant industry perspective concerns the issue of incursions out of northern areas including PNG, Torres Straits and Eastern Indonesia.

The NAQS program addresses the border quarantine needs of the 'northern pathway', however, HAC would see it as appropriate for a general review of the effectiveness and response mechanisms of the existing strategy including the incorporation of specific targeted outcomes such as 'no new pest of disease for the next, say, three years'.

#### **Recommendations**

HAC supports expanded efforts by AFFA in its pre border preventative programmes.

HAC is particularly concerned about the risk situation to Australia through northern regions and seeks increased resourcing to expand the reach of existing programmes.

HAC supports expanded Australian investment into near countries in areas of capacity to diagnose, control and eradication of major pests and diseases where appropriate.

HAC would see it as appropriate for a general review of the effectiveness and response mechanisms of the existing NAQS program including the incorporation of specific targeted outcomes such as 'no new pest of disease for the next, say, three years'.

#### **5.5 AQIS Border Operations**

The border is one of the most critical points for quarantine operations and it is where most effort is expended.

In response to the QRC Report in 1997, border operations have been upgraded including improved collection of management information, which is used to assess outcomes.

ANOA has estimated that there are still many prohibited goods entering Australia undetected. The ANAO has also drawn the attention to the fact that leakage data for cargo or vessels have not yet been collected to assist in the assessment of the relevant border programmes.

HAC view the risk of breaches with respect to cargo shipments as being a high-risk area for pest incursions (eg fire ant incursion) and so the need for adequate data on which to base an appropriate risk assessment is critical to effective quarantine controls.

On the wider issue of AQIS operations, HAC notes the role and responsibilities of the Horticulture Exports Consultative Committee (HECC).

HAC believes HECC has a valuable role to play in overseeing developments and strategic initiatives but would seek, expanded consultation between industry and the Committee about issues of deliberation and decision.

### **Recommendation**

That AQIS expands current effort for the collection of appropriate data for the development of risk assessment profiles at the border level to ensure greater effectiveness of control outcomes.

That expanded consultation between industry and the HECC takes place on matters of consideration and decision.

## **5.6 Monitoring & surveillance within Australia for breaches of the quarantine barrier**

Australia must have the capacity to rapidly and accurately detect, control/eradicate the existence of an exotic plant pest or disease incursion.

Developing this capacity requires many undertakings including:

- Operations of bodies such as Plant Health Australia
- Cost sharing agreements between the states and the Commonwealth and Territories
- Forecasting systems
- Surveillance systems
- Identification of incursions
- Diagnostic resources
- Pest and disease control and eradication strategies.

Australia's Northern Australia Quarantine Strategy (NAQS) including East Timor provide an important front line defence to pest and disease incursions.

Compared with other primary industry sectors, horticulture often feels more vulnerable to incursion threats due to the nature, geography and structure of the industry, often relying on random incidents to expose the presence of a new threat. Government needs to ensure more than adequate resourcing of its programmes to ensure effective outcomes for quarantine protection.

While the ANAO found the programme to be effective, the Horticulture industry has some reservations about the final outcome of the program due to recent incidents such as the incursion of the 'Red Banded Mango Caterpillar.

### **Recommendations**

HAC supports the continued if not expanded role that AFFA is playing in the coordination of policy development, monitoring and surveillance at a national level, in close partnership with the States and Territories.

HAC seeks a clear commitment from Government on matters covering community, industry and government responsibilities including funding in the event of incursion incidents.

## **5.7 IRA development**

The aim of the Import Risk Analysis (IRA) process is to provide a transparent and scientific based process for determining and managing biosecurity risks. The objective is to apply an intensive and rigorous scientific investigation into the disease and pest risks of a commodity that is proposed to be imported.

This aspect of quarantine function has been a most contentious issue from horticulture's position with industry concerns surrounding:

- Lack of transparency of process
- Uncertainty of pathway of process
- Uncertainty of scientific principles and their application
- Lack of timeliness.

With this in mind, BA has conducted a review of the IRA process with extensive consultation with stakeholders. HAC submitted to the review details of which are shown in appendix (b).

The major changes to the IRA have included:

- More regular communications with stakeholders
- Adoption of a single IRA approach
- For all IRA's, an initial paper for consultation with stakeholders to be a technical issues document providing early stakeholder input
- IRA's to be subject to formal external scientific peer review
- All technical reports in final form, submissions and peer reviews to be placed on the public file.

The economic, regional and social effects of IRA outcomes will have major implications for many country communities. While this is a matter for Government and not for BA as the agency with functional responsibility, an appreciation of the wider implications must be made with issues concerning possible restructuring need to be factored into a broader judgement of the situation.

## **Recommendations**

While HAC welcomes the refinements to the IRA process, however there are residual concerns about the degree and timing for access to the public file for IRA information.

HAC would urge the formalisation of the 'Technical Working Group Process' as part of the overall IRA process.

HAC urges streamlined communications to all stakeholders including State and Territory Governments.

That Government prepare a full social, economic and regional impact statement before any decision is taken with respect to an IRA application.

## **5.8 Opportunities to increase public awareness of, & involvement in quarantine issues**

Community awareness strategies have been upgraded in recent years with a broad approach to lifting awareness of quarantine matters.

BA has a communications strategy in place that aims to increase awareness of the IRA process. A stakeholder register has also been compiled to improve quality of communications.

AQIS operates two major quarantine awareness programmes targeting travellers and communities and visitors to north Australia.

The ANAO has pointed to the results of an awareness survey by AFFA as indicating a need to further review the effectiveness of some aspects of some programmes.

From time to time the issue of industry co regulation has been raised in the context of AQIS operations. More attention needs to be given to adopting the principle of industry co regulation where this can produce more efficient and effective quarantine outcomes.

### **Recommendation**

HAC supports continued if not expanded funding of the public education/communications programme for quarantine awareness.

HAC also supports the maintenance of an extensive industry consultation programme to enhance awareness of quarantine developments and responsibilities.

## 6. Appendices

### *Appendix (a) Horticulture Australia Council's Strategic Intent*

#### **1. By June 2005 the Horticulture Australia Council will be:**

- Recognised as the most effective body to further the national interests of horticulture in Australia
- Recognised as an organisation that focuses on solutions and not on impediments
- Acknowledged as the most effective performing body to act as a policy and communications conduit between the federal government and industry
- A body that is finely attuned in its policy development to consumer and lifestyle changes
- Recognised as delivering rigorous and professional services targeted towards industry's strategic intentions
- Acknowledged as a quality organisation, built on strong partnerships with all stakeholders and satisfying their needs.

The Council seeks to be a highly valued national body respected for its leadership in creating prosperity for Australian horticulture by:

- Representing horticulture with a powerful and unified voice
- Providing the structure and resources to deal with national issues of common interest for members
- Delivering positive outcomes for industry which provide benefits that would otherwise not be delivered

#### **2. Key strategic issues for action**

##### **2.1 Trade development and market access**

- International trade makes an important contribution to regional Australia. Exports underpin much of the employment and income generated by the horticulture industry. Exports account for around 27% of income in regional Australia.
- Trade liberalisation through reduction of tariffs and other barriers has accompanied export growth however intensified adjustment pressures have impacted on many industries.
- Maintaining and expanding market access has long been identified as a major strategic issue for horticulture. The planned review of the 1994 Uruguay Round Agreements under GATT has the potential to further expand export opportunity for Australia's horticulture.

##### **2.2 Quarantine and Biosecurity**

- Protection of Australia's agricultural resources from entry, spread or establishment of unwanted pests and diseases which may cause economic, environmental or social damage
- Maximisation of market access opportunities for horticultural exports.

##### **2.3 Sustainable use of natural resources**

- Heightened global and domestic regulation and awareness of environmental matters poses both challenges and opportunities for Australian horticulture.
- Industry is highly likely to face a commercial environment in which consumers will demand environmentally sound products

##### **2.4 Industry and business development**

- Improved business outcomes for the industry will inevitably depend on a mix of inputs whereby financial expectations of industry are being realised. No single formula exists for this outcome however government programs already exist for assisting industry in areas covering –
  - Innovation R&D
  - Value Chain alliances
  - Training and skills development
  - Industry must maximise opportunities for tapping into these programs

## **2.5 Organisation and development of HAC**

- The need for a peak body to represent the interests of the industry on key national agenda items has been acknowledged.
- Resources, funding, staffing, positioning are all matters for urgent consideration.
- Building positive public relations profile and establishing links to the Commonwealth Government to progress key strategic issues require funding certainty and structure for the urgent job ahead.

## **Appendix (b) Comments on Draft Administrative Framework for Import Risk Analysis – A Handbook**

***The Nairn Committee’s six principles endorsed by Government require consistency with “Government policy and Australia’s international obligations”.***

- Industry has long accepted the Nairn principles as a broad framework for development of quarantine and biosecurity policy
- IRA processes should be consistent with obligations of AFFA under Australia’s domestic law.
- This imperative would require application of the tests laid down in the Quarantine Act and Proclamation.
- Tests provide for a broader consideration of environmental and social harm than the SPS Agreement arguably provides.
- They also provide for Australian producer interests, which might be adversely affected, to be accorded procedural fairness.

### **Australia’s Biosecurity Policy**

The draft states “the primary purpose of biosecurity is to protect Australia from the entry, establishment and spread of unwanted pests and diseases which may cause social, economic or environmental damage, while minimising restrictions on the entry of agricultural commodities.”

- It is important that the primary purpose of biosecurity accurately and consistently reflects its intended objective.
- Both the SPS Agreement and the Quarantine Proclamation refer to “entry establishment or spread”.
- There is no support in domestic law for the statement “while minimising restrictions on the entry of agricultural commodities”.
- The SPS Agreement imposes a different requirement – that SPS measures should be “least trade restrictive”.

***The draft contemplates that Australia will have a single setting of acceptable level of protection (ALOP).***

. The draft states that Government sets the ALOP and that AFFA’s contribution is to provide “technical information and advice”.

- There is no support in international or domestic law for a requirement of a single ALOP.
- Industry has concerns about the concept of a single ALOP and seeks far more understanding and clarity about its composition and structure.
- Prior to determining a final framework for IRA process, Industry asks to be advised of the following:
  - . Who has determined Australia’s ALOP
  - . When was it determined
  - . What is the text of the policy as determined by Government?

### **Policy Development and Review**



The draft states that “import risk analysis is the discipline of identifying the pests and diseases relevant to a proposal, assessing the risks posed by them and, if those risks are unacceptable,

***The draft states that “import risk analysis is the discipline of identifying the pests and diseases relevant to a proposal, assessing the risks posed by them and, if those risks are unacceptable, determining what measures or actions must be taken to reduce those risks to an acceptable level.”***

- Industry supports the principle that all import risk analyses include the determination of acceptable level of risk with reasons given for that determination.
- Both the SPS Agreement and domestic law contemplate a further step in risk analysis – which is commonplace in all systems-based risk analysis. That is, to determine the appropriate level of protection or acceptable level of risk.
- Further, neither the SPS Agreement nor Australian domestic law requires that import risk analysis extend to assessing all measures or actions, which must be taken to reduce risks to an acceptable level.
- In particular there is no requirement on Australia to assess measures, which might impact on the methods of production, packing or transport of goods to Australia.
- Import competitors in the Australian industry have an interest in ensuring that BA does not proactively address measures, which impact on production, distribution or transportation systems.
- Import competitors would be advantaged by the Handbook providing that in such cases, where import risk analysis will be limited to the assessment of those measures which are proposed by the export proponent and assessing their adequacy in controlling quarantine risk.
- This approach has the substantial advantage that Australian taxpayers and Australian industry would not pay for the conduct of technical assessments on behalf of would-be exporters to Australia

## **Stakeholder Register**

Arrangements for the Stakeholder Register.

- In addition to the requirements for BA to inform those who elect to be on the Stakeholder Register, the IRA process needs to take account of the special interests of Australian producers who may be adversely affected by a particular proposal.
- The Handbook should reflect this by requiring BA to publish, early in the IRA process, a consultation strategy perhaps as part of the production of a broad scoping statement, which has been identified as part of STEP 5 of the IRA Flowchart.
- This strategy document should be developed in close consultation with relevant peak industry representative bodies within Australia.

## **Other Assessment Processes**

***Draft again refers to pests and diseases “entering and establishing”.***

- The reference should be to “enter, establish or spread”.

Relevant economic consideration.

The draft mentions, “The potential competitive economic impact of prospective imports on domestic industries is not within the scope of IRA’s”

- The costs to industry of markets lost or reduced as a result of imports, or of an outbreak, or as a result of the costs or other consequences of control measures, are relevant economic considerations.
- The potential competitive economic impact of prospective imports is said by the draft Handbook to be outside scope
- It could be well within scope where that impact is partly contributed by increased costs brought about by the necessity for control or surveillance.

## WTO SPS Agreement

***“When there is insufficient scientific evidence to complete a risk assessment, an importing country may adopt a provisional measure(s) by taking into account available pertinent information; additional information must be sought to allow a more objective assessment and the measure(s) reviewed within a reasonable period of time.”***

- In assessing probabilities for insect pests and plant pathogens, required technical information is often lacking or even quite outdated in some circumstances.
- The *Handbook* says that the importing country may adopt a provisional measure in such cases.
- It does not say that the provisional measure should be conservative.
- The proposed IRA procedure should direct risk assessors to use conservative estimates of likelihood in such instances and to use conservative measures, until the necessary research is conducted.
- Science used in the IRA process must be contemporary and based on current research
- If guesses are to be used, Industry believes they should err on the side of caution as a matter of policy.

## IRA Work Program

***The draft framework proposes two important changes to IRA policy.***

***First the abolition of any restriction on the number of IRAs being undertaken at the instigation of any particular WTO member.***

***Second the abolition of the requirements for the proponent of an IRA to provide sufficient information for work to commence on the IRA.***

- The likely effect of the first change is that major trading partners of Australia are likely to be successful in placing pressure to accelerate IRAs in respect of their proposed imports.
- The consequence of the second is that IRAs are likely to be commenced at an earlier time with a great deal more resources being likely to be required to assemble adequate data on pest lists and environmental conditions within the source country.
- This will be a cost to Australian taxpayers and industry – including the costs to BA and to peak industry representative bodies responding to IRAs.
- Industry has long had concerns about the ability to respond adequately to IRA inquiries and if proposed changes are to proceed, then specific Government assistance is required to ensure appropriate resourcing of an industry response.

## IRA Work Program

***The draft proposes that BA “will examine proposals and applications, and determine which necessitate an IRA being conducted” Some may not have to be dealt with through an IRA taking into account a number of listed factors. BA proposes to routinely place on the WebPages and in its newsletter, advice to stakeholders on the IRA works program.***

- Industry believes the communications focus should be on consultation with all stakeholders who are most likely to be affected by the import application.

- Strategies should be developed to focus on quality consultation with back up from general communications
- Industries and key stakeholders likely to be most affected by a proposed importation must be locked into early consultation processes, which accompany the IRA framework.
- BA must reach out to stakeholders for their early and ongoing input into the IRA process.

### **Consultation with States, Territories and Environment Australia**

***The new process includes early consultation with state/territory CEO's and Environment Australia (step 4).***

- This change has been introduced in response to stakeholder comment
- It is a positive move but it does raise the issue of favoured status of some stakeholders over others.
- There is the risk that the views of government bodies will be included from the start, whereas industry bodies have to enter into the various levels of formal consultation later in the process
- Industry suggests consultation should be guaranteed to peak industry representative bodies, but this has not been taken up.
- This is not in the spirit of “shared responsibility”.

### **IRA Team Membership, Timetable and Scope**

***The draft proposes that where expertise is available within BA it will be obtained from there.***

- The draft is inconsistent with Government policy, which is that performance of governmental functions should be outsourced unless there is a clear business benefit to doing it in-house
- Industry seeks input and consultation in the development of the scoping statement envisaged in step 5 of the framework flow chart.

### **IRA Team Membership, Timetable and Scope**

***The draft proposes that BA will chair all IRA Teams.***

- This raises the question of the perception of the independence of the IRA team.
- BA should consider using an independent team member as chair, subject of course to “normal” AFFA guidelines for such appointments.

### **IRA Team Membership, Timetable and Scope**

***“Stakeholders may wish to discuss with Biosecurity Australia whether Biosecurity Australia's resources and work program would allow part(s) of the IRA relating to pest and disease categorisation and risk assessment to be carried out by a third party. In such cases, Biosecurity Australia would assess the documents produced by the third party in terms of their adherence to the IRA Guidelines and their scientific basis, and whether they are in line with the Government's objectives for biosecurity.”***

- The issue of “third party service providers” for export inspection services has long been held as a means of delivering economies and efficiencies however failure to reach a workable formula leaves the principle of third party providers a contentious issue within Industry
- As a general principle Industry does not have major problems with “third party service providers” so long as a number of accompanying issues are satisfied and these include matters such as:

- Like for like standards and quality of output must apply at no less than BA performance bench marks
- Stakeholder consultation standards being consistent where third parties provide the services
- Any documents produced would be subject to the same processes as would documents completely developed an IRA team.
- While supporting the concept in principle, Industry would seek to have a separate paper prepared examining the issue on hand along with an expansion of the implications of introducing this initiative.

## **Initial Consultation with Registered Stakeholders**

“When work on an IRA is about to commence, Biosecurity Australia will consult with registered stakeholders via a circular which includes the proposed scope of the IRA, an indicative timetable and a list of the required expertise, including nominations for membership of the IRA team from external sources. The information will also be placed on the Biosecurity Australia WebPages.

***Stakeholders will have 30 days after the circular is issued to provide comment and membership nominations to Biosecurity Australia. Submissions received will be placed on the public file created for the IRA.”***

- Industry welcomes the commitment to timely notice for the IRA process.
- Industry believes the scoping statement should always be mindful of the risks to associated industries when it is prepared – for example an import application for hebeconias to Australia would have serious implications for the banana industry and so a prepared scoping statement would be deficient if no mention of this prospect was made.
- The period of thirty days for consideration, comment and membership nominations will present practical difficulties for most peak industry representative bodies in terms of being able to circulate members and arrive at a consensus view on the proposed IRA.
- While it is noted that Biosecurity may approve an extension of time, perhaps a 60-day turn around time line would be more practical for quality feed back.

## **Consultation on Technical Issues Paper**

***The draft proposes that Issues Papers will be published, and opportunity to comment on them provided much as at present.***

***An additional requirement will be that Issues Papers will set out a list of potential scientific peer reviewers with the proposal that comments be made on that list.***

- Submissions may be made to the IRA team but not be placed on the public record unless the submitter agrees.
- This means that an individual or organisation may influence the process, and that other stakeholders are denied access to the source of the comment. Since the weight given to an opinion is often related to the person giving it, the source should be revealed in all cases. Otherwise transparency is compromised
- The law of defamation is likely to operate to make it very difficult for stakeholders to comment adversely on any proposed potential scientific peer reviewers
- Industry encourages AFFA to engage in comprehensive informal consultation with those knowledgeable in science related to the industry prior to publication of any list of potential scientific peer reviewers.
- AFFA will also need to consider the risks to AFFA – and to Australia in any subsequent WTO proceedings - of publishing the name of a person as a potential scientific peer reviewer in the Issues Paper and then declining to use that person later in the process.

## **Consultation with Stakeholders**

It is proposed to maintain the present position where stakeholders have 60 days to comment on the draft IRA.

- The time frame for reply is fixed at 60 days. This should be flexible.
- How long stakeholders require commenting on a draft IRA depends upon the complexity of the work, and the nature and extent of science considered in the draft IRA.
- It is highly possible that stakeholders will be presented with a closely reasoned report of great technical complexity, particularly if semi-quantitative and quantitative assessments are used extensively
- There is no obligation for the IRA team to reveal their detailed assessments during the consultation processes.
- The details are central to the outcome, and it may be that stakeholders will need to identify and engage appropriate experts, consider their reports and prepare replies on complex matters on which the IRA team has been working for many months
- The time for comment should be set on a case-by-case basis – and in simple cases will be not less than 60 days.

### **Independent Scientific Peer Review**

It is proposed that the IRA Team will commission independent scientific peer review in finalisation of an IRA Report.

- Industry has major reservations about the practicalities of the suggested appointment of an independent scientific peer review.
- Peer reviewers cannot be “independent” when they are commissioned by the IRA Team whose work is being reviewed.
- If the object is to provide independent peer review the commissioning should be by people independent of the authors of the IRA Report.
- If the authors of the IRA Report are to commission the reviews there should be no pretence that they are independent.

### **Preparation of Final IRA Report**

The draft contemplates that where major changes are made to a draft IRA there will be some cases where a further draft of the IRA will be published for consultation. In those cases it proposes that there be a further 60 days for comments. Industry believes there should be flexibility to increase the 60-day period to account for issues of complexity and level of science.

### **Consideration of Final Report**

***The draft reflects current practice where the decision on the final IRA Report will be by the Executive Manager of BA taking into account compliance with the Handbook and the SPS Agreement.***

- A further factor, which the Executive Manager should take into account, is whether the process by which the IRA has been conducted, and the conclusions of the IRA form a lawful basis for decision-making under the Quarantine Act and Proclamation.

### **Scientific Advisory Panel**

***A new body – the Scientific Advisory Panel – is proposed.  
The Panel will comprise seven eminent scientists appointed for periods of three years.***

**Each Advisory Panel Report will be based on an evaluation of the IRA by three members.**

If significant revision of the IRA is considered necessary, then stakeholders “will be consulted further”.

- Industry has several reservations about the proposed Scientific Advisory Panel in its proposed form
  - It is unclear who would have access to the Advisory Panel – although it is envisaged that the Advisory Panel may discuss issues with the IRA Team.
  - The role of the three members is essentially limited to determining whether the IRA Report is logical and based on good scientific method – details of the scientific assessments are not to be considered
  - While the Scientific Advisory Panel is a positive initiative with the potential to increase the accountability of the IRA process, its effectiveness will be limited to the accessibility and accountability of the Scientific Advisory Panel itself.
  - The Scientific Advisory Panel should seek submissions on matters within its terms of reference from any import proponent and any peak industry representative whose members’ interests may be adversely affected by the importation.
  - Accountability would also be enhanced by an operational framework expressly providing that the Panel of three will be appointed by the independent Chair of the Scientific Advisory Panel and not by BA.
  - If significant revision of the IRA is considered necessary, then stakeholders “will be consulted further” with the nature of consultation being defined along the lines that “stakeholders will have the opportunity to assess the revision and respond in writing to any significant change”.
- In addition, the terms of reference of the Scientific Advisory Panel should be broadened to provide an independent review of genuinely contentious scientific matters:
  - The Scientific Advisory Panel in its proposed form has little authority to arbitrate on scientific matters, because it is unable to revisit the details of the scientific assessments of the IRA team
  - Industry seeks some step in the process where serious scientific concerns with the draft report are dealt with in a formal and transparent way. The proposed process currently allows for consultation at steps 11 and 13, but there is no right of appeal on scientific grounds at any step
  - The detailed discussion in the *Guidelines* clearly indicates that assigning likelihood is an imprecise science, especially when qualitative terms like “low” or “very low” are used. It is also becoming increasingly complicated. In many instances, the data on which semi-quantitative and quantitative estimates are based will be contentious
  - The system relies heavily on scientific opinion, and scientific opinion varies amongst scientists
  - The right of appeal on scientific grounds is as important if not more so than the right of appeal on the grounds of process. One changed scientific rating can vitally affect the final outcome
  - It might be better to expand the terms of reference of the Scientific Advisory Panel to be a genuine, independent review of the scientific issues
  - The IRA team should be required to refer scientific matters in dispute to the Scientific Advisory Panel for resolution”.
  - Scientific matters would be regarded as in dispute when a peer reviewer at Step 15 identifies the dispute or where a stakeholder provides credible scientific comment disputing the scientific issue.
  - Further, where the panel concludes that a scientific issue, which is material to the outcome of the IRA, is in genuine scientific dispute the Panel will err on the side of caution.

**Provision for Appeals on Final IRA Report**

***The draft framework involves significant tightening of the grounds for appeal. The current Handbook provides for an appeal where “this Handbook has not been properly followed”. The draft provides for appeals where “there was a substantial deviation from the Handbook framework”.***

- It is unclear when a deviation from the Handbook would be “substantial”.
- This is potentially a dangerous limitation on appeal rights.

It would be preferable for there to be a right of appeal – but for the panel to be able to dismiss the appeal where any deviation appears to have not affected the outcome.

### **Guidelines for Import Risk Analysis Draft September 2001**

The *Guidelines* document provides the detail of how the Import Risk Analysis is to be conducted. The main change from the previous version is that it provides much more detail about allocation of likelihood of events, and assessments of risks and consequences. The basis for semi-quantitative and quantitative assessments is described.

Preliminary comments are presented at this stage are:

- Although the processes for assessing likelihood’s and consequences are better defined, the key issue remains that in many cases essential data will still be missing.
- No matter how sophisticated the process, the “garbage in garbage out” principle still applies. A more glamorous process will not solve this problem.
- The concept of the Appropriate Level of Protection for Australia has been the subject of many debates without a clear and transparent resolution to the issue.
- Comments such as ALOP are a “societal value judgement to which AFFA contributes by providing technical information and advice” (page 25) do not shed much light on how the ALOP is actually decided.
- Tables 1 and 2 (pages 25 and 26) indicate that the Australia’s ALOP is represented by a “very low risk” assessment when the likelihood of entry, establishment and spread is combined with the consequences of entry and exposure.

Now that these *Guidelines* define terms such as “low” and “very low” in semi-quantitative and quantitative terms, the question arises as to whether Australia’s ALOP has now been defined (de facto). If so, this has consequences for AFFA and all stakeholders. (See previous comments regarding ALOP and the IRA framework.)

Value of Crop

- The system rightly takes economic consequences into account
- The more valuable the crop and the greater the production, the greater the risk.
- However this discriminates against smaller crops, particularly those with potential.
- Coffee has a relatively small GVP in Australia currently, but in 20 years time Australian production might replace the huge volume of imports.
- Also, the Australian Tropical Fruits industries offer considerable growth potential as emerging products.
- If the proposed system had been used 30 years ago, the wine and table grape industry would perhaps have been considered minor – now it is one of the giants.
- Thus more emphasis should be placed on potential value, and assessors directed to take this into account to a greater degree.

### **Executive Summary of Submission**

Incursions of exotic pests and diseases continue to be a major threat to Australia's primary production.

The trend towards more open trade pathways has placed additional pressures on maintaining quarantine standards.

If standards are weakened through international pressures and short-term savings measures, Australian Horticulture's international reputation as a 'clean industry' will be threatened.

HAC supports the need to balance short to medium term economic considerations affecting trade and export markets with the longer-term interests of sustainable agriculture, human health and environmental protection. Although trade is vital to achieve industry growth for Australian horticulture, quarantine services and standards must not be compromised.

Horticulture Australia Council's interest in the IRA Administrative Framework is driven by its strategic commitment to quarantine and biosecurity which seeks to achieve:

- *Protection of Australia's agricultural resources from entry, spread or establishment of unwanted pests and diseases which may cause economic, environmental or social damage*
- *Maximisation of market access opportunities for horticultural exports*

Australia's horticulture industry has long been concerned about the IRA process and IRA reviews covering durians, apples, pineapples, bananas, table grapes (and soon citrus) fuel numerous concerns about due process, extent and quality of consultation and debate about science.

HAC believes the IRA process must attract industry confidence if it is to deliver fairness, efficiency and equity of quarantine and biosecurity outcomes.

Comments about the proposed IRA Administrative Framework include the following key points:

- Industry accepts the Nairn principles as a broad framework for development of quarantine and biosecurity.
- IRA processes should be consistent with obligations of AFFA under Australia's domestic law
- It is important that the primary purpose of biosecurity accurately and consistently reflects its intended objective
- Industry supports the principle that all import risk analyses include the determination of acceptable level of risk with reasons given for that determination.
- Strategies should be focused on quality consultation rather than only on general communications
- Industries and key stakeholders likely to be most affected by a proposed importation must be locked into early consultation processes, which accompany the IRA framework.
- The proposed IRA procedure should direct risk assessors to use conservative estimates of likelihood's probabilities for insect pests and plant pathogens and to use conservative measures, until the necessary scientific research is conducted.
- Industry has long had concerns about the ability to respond adequately to IRA processes and if proposed changes are to proceed, then specific Government assistance is required to ensure appropriate resourcing is available for a fair and effective industry response.
- On the question of third party service providers, Industry requests a separate review of the feasibility and details of this matter.
- In several areas of the proposed framework, increased flexibility is required for response times to specific issues.
- Industry has reservations about the practicalities of the suggested appointment of an independent scientific peer review.
- Industry has several concerns about the proposed Scientific Advisory Panel in its proposed form



- Industry seeks changes in the process where serious scientific concerns with the draft report are dealt with in a formal and transparent way.
- The right of appeal on scientific grounds is as important if not more so than the right of appeal on the grounds of process.
- Industry looks forward to further consultation on the Guidelines as indicated by BA.