

CHAPTER TWO

THE DETERMINATION OF AUSTRALIAN QUARANTINE POLICY

Introduction

2.1 This chapter initially considers the domestic legislative quarantine framework in Australia. That framework recognises the need to meet Australia's WTO obligations, but emphasises that where necessary, Australia should continue to enforce its traditionally conservative approach to quarantine policy.

2.2 Subsequently, the chapter examines the four stages in the conduct of IRAs by BA: initiation; risk analysis (routine or non-routine); determination; and policy application. These stages follow the processes established in the *Import Risk Analysis Process Handbook*, which was published by AQIS in 1998.

The Domestic Legislative Framework

2.3 It is widely recognised that Australia takes a very conservative approach to the protection of its environment from exotic pests and diseases in an attempt to prevent the unplanned introduction of pathogens and parasites.

2.4 As discussed in Chapter One, the SPS Agreement recognises that countries have the right to adopt the standards they consider appropriate to protect animal, human or plant life or health and the environment, but that the exercise of that right is constrained. Specifically, sanitary and phytosanitary measures should not create arbitrary or unjustifiable barriers to trade.¹

2.5 At a legislative level, Australia's conservative quarantine approach is implemented through the *Quarantine Act 1908* and subordinate regulations and proclamations, which provide the power to regulate entry of people, goods and objects into Australia. Section 4 of the *Quarantine Act 1908* defines the scope of quarantine as follows:

In this Act, quarantine includes, but is not limited to, measures:

- a) for, or in relation to, the examination, exclusion, detention, observation, segregation, isolation, protection, treatment and regulation of vessels, installations, human beings, animals, plants or other goods or things; and

1 Submission 39, p 2

- b) having as their object the prevention or control of the introduction, establishment or spread of diseases or pests that will or could cause significant damage to human beings, animals, plants, and other aspects of the environment or economic activities.²

2.6 Subsection 13(1) of the Act provides, *inter alia*, that the Governor-General in Executive Council may, by proclamation, prohibit the importation into Australia of any articles likely to introduce any infectious or contagious disease, or disease or pest affecting persons, animals or plants. This power of prohibition may be applied generally or subject to any specified conditions or restrictions, which if applied, must relate to pest or disease concerns.

2.7 The level of quarantine risk posed by a particular pathogen or parasite, and whether it is “acceptably low”, is defined in section 5D of the *Quarantine Act 1908*. Section 5D refers to the probability of a disease or pest being introduced, established or spread, and the probable extent of harm to human beings, animals, plants and other aspects of the environment, or economic activity.³

The Nairn Committee Review of Australian Quarantine

2.8 In 1996, the Australian Quarantine Review Committee, chaired by Professor Malcolm Nairn, was established to undertake a comprehensive review of quarantine issues facing Australia. The Committee’s report, *Australian Quarantine - A Shared Responsibility*, was published in December 1996. The report made 109 recommendations, addressing all aspects of policy and procedure. In particular, the report recommended that IRAs should be:

- a) Conducted in a consultative framework, with agreed priorities and timetables;
- b) Scientifically based and politically independent;
- c) Transparent and open, including peer review and public scrutiny;
- d) Consistent with Government policy and Australia’s international obligations, to be achieved by reference to existing policies and procedures, international standards, guidelines and recommendations, and through the contribution of participants;
- e) Harmonised, by taking account of international standards, guidelines and recommendations; and

2 Cited in Biosecurity Australia, Draft Import Risk Analysis on the Importation of Apples from New Zealand, October 2000, p 20

3 Submission 41, p 4

- f) Subject to appeal on the process.⁴

2.9 In response, the Government released a statement on quarantine in 1997 entitled *Australian Quarantine – The Government Response*. The statement noted the necessity for quarantine decisions to be justifiable scientifically and emphasised the continuation of a cautious and conservative approach to Australian quarantine policy. However, the Government also noted that this objective had to be balanced with Australia's broader trading interests, given the very close linkage between Australia's quarantine status and export future:

Australia's export future depends on our relative freedom from pests and diseases. Further, our ability to overcome quarantine barriers in potential export markets depends partly on Australia having a credible quarantine policy that is consistent with international rules and standards.⁵

2.10 Following the report of the Nairn Committee, the Government released the *Quarantine Proclamation 1998*, which sets out the considerations the Director of Quarantine must take into account when deciding to grant a permit for importation into Australia. Section 70 of the Proclamation states that:

In deciding whether to grant a permit to import a thing into Australia or the Cocos Islands, or for the removal of a thing from the Protected Zone of the Torres Strait Special Quarantine Zone to the rest of Australia, a Director of Quarantine:

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

2.11 In 1999, the *Quarantine Act 1908* was extensively revised through the *Quarantine Act Amendment Act 1999* to implement the recommendations of Professor Nairn in *Australian Quarantine - A Shared Responsibility*. In particular, the *Quarantine Act Amendment Act 1999* clearly indicates that Australian quarantine policy is based on a concept of managed risk to an acceptably low level.⁶

The Stages in the Conduct of Import Risk Analyses

2.12 Each year, BA receives a number of proposals to import agricultural commodities. Many of those proposals are routine, however some proposals require a significant amount of analysis to determine whether the commodity poses a quarantine

4 M.E.Nairn, P.G.Allen, A.R.Inglis & C.Tanner, *Australian Quarantine – A Shared Responsibility*, 1996

5 *Australian Quarantine - the Government Response*, 1997, p 8

6 Submission 41, p 4

risk, and if so, how that risk should be addressed. In such instances, BA undertakes an IRA, in accordance with WTO and IPPC guidelines.⁷

2.13 To improve understanding of the IRA process, AQIS released in 1998 the *Import Risk Analysis Handbook*, setting out in detail the process followed by AQIS in response to an import proposal. That process has four stages:

- a) initiation;
- b) risk analysis (routine or non-routine);
- c) determination; and
- d) policy application.

2.14 The Committee summarises the requirements of the *IRA Handbook* on each of these points below.

Initiation

2.15 The *IRA Handbook* requires BA to notify stakeholders when a proposal necessitating an IRA is received and give them a opportunity to comment on the IRA process. To facilitate this, the *IRA Handbook* requires that a public file, containing the non-confidential stakeholder comments and technical documentation, be held at BA headquarters in Canberra. It is to be available to stakeholders during business hours, subject to the submitter not requesting that the submission be kept confidential in accordance with the *Freedom of Information Act 1982* and the *Privacy Act 1988*.⁸

Risk Analysis (Routine or Non-routine)

2.16 When a formal IRA process is initiated, the *IRA Handbook* indicates that BA may undertake either a routine risk analysis to handle less complex reviews of established quarantine arrangements, or a non-routine risk analysis for more complex reviews. In the past, most reviews have required only a routine analysis, and have been handled in-house by BA, with consultation with scientists and other experts as required. Non-routine risk analyses require the appointment of an independent expert risk analysis panel.⁹

2.17 The *IRA Handbook* also requires BA to develop initially a draft IRA, to be circulated to stakeholders for comment within 60 days. In accordance with WTO rules, Australia also releases the draft IRA to other countries for comment.¹⁰

7 AQIS, *The AQIS Import Risk Analysis Process Handbook*, 1998, p 7

8 *Ibid*, p 7, 12

9 *Ibid*, p 7

10 *Ibid*, p 15

Determination

2.18 Following the 60-day consultation period, BA is required to give further consideration to any issues raised during the consultation period, prior to development of a final IRA. In exceptional circumstances where new or important information comes to light, BA may release a revised draft for further comment and consultation.¹¹

2.19 A determination on an importation proposal is made by the Director of Quarantine - the Secretary of AFFA, Mr Taylor – at the end of the IRA process. There is provision for stakeholder appeal within 30 days on the grounds that BA has failed to follow due process.¹²

Policy Application

2.20 Once the IRA is complete, BA is required by the *IRA Handbook* to circulate any new or revised import conditions and notify the WTO.¹³

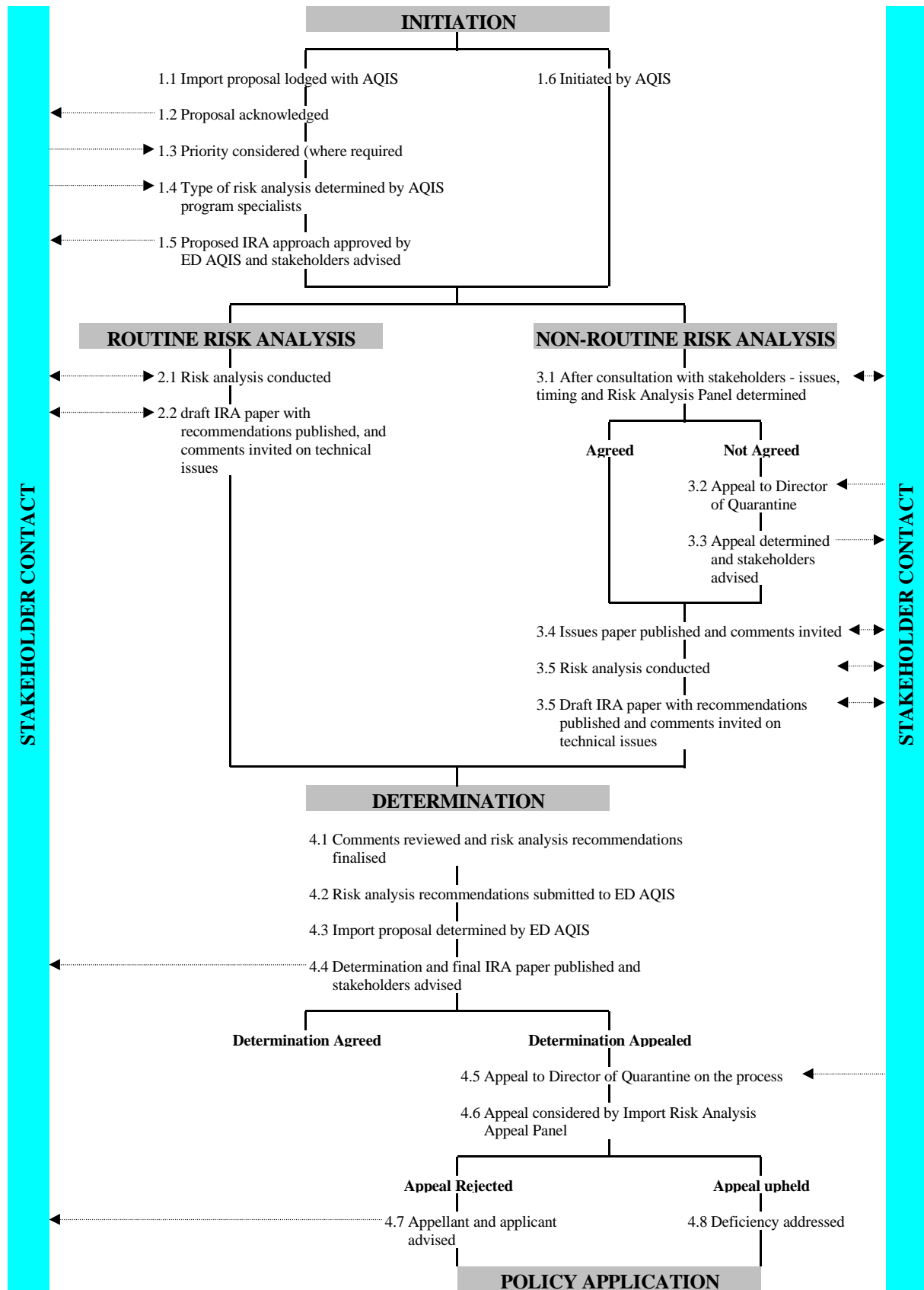
2.21 Figure 2.1 below presents a flow chart of the four stages in the IRA process, as described in the *IRA handbook*.

11 *Ibid*, p 18

12 *Ibid*, pp 18-19

13 *Ibid*, p 12

Figure 2.1: The Import Risk Analysis Process



Source: AQIS, *The AQIS Import Risk Analysis Process Handbook*, introduction