

# CHAPTER FOUR

## Administration of Process by Biosecurity Australia

4.1 The preparation of the revised draft IRA was a process administered by Biosecurity Australia in conjunction with the Import Risk Analysis Panel. The administrative steps of the process are set out in Biosecurity Australia's Handbook (the IRA Handbook). During the inquiry the Committee heard evidence that levelled a number of criticisms at the Biosecurity Australia's administration. The criticisms include poor communication with Australian stakeholders and a lack of transparency in the process. This chapter examines those criticisms.

### Communication

4.2 The IRA Handbook indicates that Biosecurity Australia "maintains a register of stakeholders to assist effective consultation and communication."<sup>1</sup> The Handbook continues by describing stakeholders as "government agencies, individuals, community or industry groups or organisations, in Australia or overseas, ..." <sup>2</sup>. Yet evidence presented to the Committee suggests that both consultation and communication with two groups of stakeholders – Australian industry groups and growers – continues to cause concern.

4.3 The Apple and Pear Growers Association of South Australia indicated that while there had been some improvement in the communication and consultation process, there was still room for advancement in a number of areas. They made the following points in relation to the South Australian industry:

- the focus of communication and transparency tends to be at the upper levels;
- further consultation needs to occur within regions (and involve growers); and
- regional issues need to be raised, discussed and included during the drafting process.<sup>3</sup>

4.4 The Tasmanian Apple and Pear Growers Association indicated that Tasmanian industry representatives participated in a working group and provided evidence during the initial stages of the consultation process. However, their involvement ended completely following Biosecurity Australia's determination of risk elements, allowing for very little impact on the final outcome.

---

<sup>1</sup> Department of Agriculture, Fisheries and Forestry, Import risk analysis handbook, Canberra 2003, p. 9

<sup>2</sup> Department of Agriculture, Fisheries and Forestry, Import risk analysis handbook, Canberra 2003, p. 9

<sup>3</sup> RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 46

4.5 The Western Australia Fruit Growers' Association (WAFGA) made comments in a similar vein. Western Australia does not have the disease apple scab or the pest codling moth, as described in paragraph 3.95. The WAFGA argued that despite apple scab's potentially devastating effect on the Western Australian apple and pear industry, there had been "improper consultation between Biosecurity Australia and the Department of Agriculture in Western Australia".<sup>4</sup> WAFGA stated that:

We have an extremely good team of people in the west who do risk assessment analyses for different products which come in. Biosecurity Australia certainly consulted with them on identifying what pests and diseases were relevant to WA, but they did not consult with them on the actual risks, what they thought of the risk measures and what kinds of risks were involved.<sup>5</sup>

4.6 In its submission to the inquiry, WAFGA also argued that the lack of consultation with Western Australian authorities on the issue of regional risk constituted a breach of the steps contained in the Handbook.<sup>6</sup>

4.7 The Committee requested Biosecurity Australia to respond to WAFGA's assertions in a question provided on notice following the 30 June 2004 hearing. The Committee asked:

Question 12

In their submission the Western Australian Fruit Growers' Association indicate that "they are not aware of Biosecurity Australia ever consulting with WA over regional risk (likelihoods of entry, establishment and spread and consequences) issues for apple scab or codling moth" (p 2) and that this is contrary to indications in the Handbook (p 15). Would you care to respond?<sup>7</sup>

4.8 In response to what was a very specific question about consultation with Western Australian authorities regarding regional risk, and the rules as outlined in the IRA Handbook, Biosecurity provided the following answer:

Representatives from the Western Australian Department of Agriculture were on the provisional technical working group that assisted in the categorisation of pests including apple scab and codling moth.<sup>8</sup>

4.9 Biosecurity Australia's answer seemed to indicate that involving the Western Australian Department of Agriculture in a provisional technical working group

---

4 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 4

5 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 4

6 Western Australia Fruit Growers' Association, *Submission 12*, Improper Consultation

7 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, Attachment A, p. 2

8 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, Attachment A, p. 2

(categorising pests of concern) represents an appropriate level of consultation. The answer also fails to address the question of why relevant WA agencies were apparently not consulted on regional risk issues – including the likelihood of entry, establishment and spread and consequences of regional quarantine pests and disease – as outlined in the Handbook. The Committee was sufficiently concerned with Biosecurity Australia's approach to this issue to ask a further question on notice following the hearing of 9 February 2005.

4.10 The Committee asked:

Could you indicate to the Committee the consultation you undertook with the WA Department of Agriculture subsequent to the work done to categorise pests of risk? Did you consult with them on the extent of the risk to WA or potential risk mitigation strategies that might be implemented? If not, do you consider this to be a breach of step 10 of the IRA handbook.

4.11 Biosecurity Australia's answer was more forthcoming:

The Department of Agriculture WA (DAWA) participated as a full member of the IRA technical working group. Biosecurity Australia consulted extensively with DAWA on a range of issues, including the extent of risk to WA, and will continue to do so. Biosecurity Australia considers that the process used fully complied with the requirements of the IRA Handbook.

### ***Errors in Revised Draft IRA***

4.12 Concerns raised with the Committee about Biosecurity Australia's communication extended beyond issues related to consultation.

4.13 The Committee was told of industry's specific concerns about the accuracy of the revised draft IRA document. Apple and Pear Australia Ltd (APAL) indicated that a number of errors had been identified during an audit analysis APAL conducted on the revised draft IRA in June 2004. As APAL proceeded through a quality assurance check using Biosecurity Australia's model, a number of discrepancies were found between APAL and Biosecurity Australia's figures.

4.14 Following the discovery of the errors, APAL wrote to both the then Secretary of the Department of Agriculture Fisheries and Forestry, Mr Mike Taylor and the then Director of Biosecurity Australia, Ms Mary Harwood, highlighting the errors as a matter of major concern. APAL expressed industry's disappointment in the response received from Biosecurity Australia which described the differences in the figures as typographical errors. They also argued that:

- industry had been attempting to respond to an inaccurate document for approximately four months;
- for three of those four months, Biosecurity Australia had been aware of the inaccuracies;
- Biosecurity Australia had not formally notified stakeholders of the errors;

- most of the errors identified are in the pathways – one of industry's major areas of concern; and
- the errors discovered in the document present a procedural fairness issue.<sup>9</sup>

4.15 APAL's level of anger and concern over the transcription errors was evident in the letter they wrote to the Minister for Agriculture, Fisheries and Forestry, the Hon. Warren Truss, MP. In it they requested that:

- the apple IRA be withdrawn;
- the Minister instigate an independent inquiry into Biosecurity Australia's actions; and
- compensation be provided for all stakeholders who prepared their responses using an inaccurate report.<sup>10</sup>

4.16 APAL described Biosecurity Australia's handling of the issue in the following terms:

After the banana IRA was shown to have problems, Biosecurity Australia stated in the public arena that those problems did not affect the apple IRA and that the apple IRA was correct. They found that they had made mistakes but they did not tell anybody. They did not tell us that we were in fact responding to a document that had fundamental errors in it. Not only that, but they continued to distribute documents that they knew were wrong.<sup>11</sup>

4.17 During its hearing on 30 June 2004, the Committee sought to clarify both the timeline of events and the decisions made in relation to the revised draft IRA. The Committee did establish that Biosecurity Australia corrected the erroneous data on the document posted on its website, but continued to distribute hard copy with the transcription errors (see paragraph 4.24).

4.18 In a subsequent response provided by Biosecurity Australia, the Committee was informed that Ms Mary Harwood had advised both the Minister's office and the Departmental Secretary's office on, or about, 19 March 2004. Both the Secretary and the Minister were advised that:

... the Risk Assessment Model, and risk assessment conclusions drawn from the model and contained in the revised Draft Apple Import Risk Analysis report were correct. She also advised that some data inputs had been incorrectly transcribed in the printed report but that they made no material difference to the risk assessment. Accordingly, Biosecurity

---

9 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 17

10 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 17-18

11 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

---

Australia had decided that there was no need to issue a correction to the report.<sup>12</sup>

4.19 The Committee was also advised that the then Secretary, Mr Taylor, supported Ms Harwood's decision, accepting that the transcription errors did not alter any risk assessments conclusions made in the revised draft IRA.<sup>13</sup> Such a response appeared to the growers to belittle their work and resource contribution.

4.20 APAL highlighted the resources the organisation had put into its response to the revised draft:

Clearly we have spent a great deal of time and effort in responding to the hard copy version of the revised draft IRA. We have spent hundreds of thousands of dollars in cold hard cash, and that is not counting the time and effort that industry people have put into responding to a document that is wrong and that Biosecurity Australia knew was wrong. That is a major problem for us.<sup>14</sup>

4.21 In relation to the errors which were characterised as 'typographical' by Biosecurity Australia, representatives of the Apple and Pear Growers Association of South Australia made the following comments:

Certainly as an industry we are most concerned – again, not only at the South Australian level but at a national level. On behalf of our industry I have committed many hundreds of hours, particularly over the last 120 days, in working on a document that we find has got errors in it.

...

From any industry perspective, we have wasted a lot of time and effort on a document which Biosecurity Australia travelled the country with throughout May and early June on a roadshow. They brought copious boxes of those reports into the state and never was there a point made that, 'There is a discrepancy between this document we are giving you' – which is basically the one we have worked on – 'versus what is on the web site.'<sup>15</sup>

4.22 In response to such criticism from the industry, Biosecurity Australia told the Committee that:

The errors identified in the printed report are minor and do not have any significant bearing on the draft conclusions contained in the published report. The proposed risk management measures bring risk below ALOP whether the correct or incorrect input data sets are used, and the risk

---

12 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, p. 1

13 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, p. 1

14 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

15 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 46-47

analysis panel will consider all comment and submissions before finalising a set of recommendations to Biosecurity Australia.<sup>16</sup>

4.23 The Committee notes the frustration experienced by the industry in relation to this matter. While it accepts that the errors did not significantly alter the risk assessments made, it understands the difficulties that Biosecurity Australia's attitude to information sharing posed. Indeed, during the inquiry the Committee experienced similar difficulties.

### ***Biosecurity Australia's evidence***

4.24 During its hearing on 30 June 2004, the Committee ascertained that the corrected tables were loaded on the web site on 31 March 2004. It was also established that Biosecurity Australia was aware, prior to 31 March, that the hard copy of the document that had been distributed was inaccurate.

4.25 At the 30 June hearing, the Committee also explored whether Biosecurity Australia officers giving evidence to the Committee at the hearing of 31 March 2004 were aware of the errors and, if so had not taken any opportunity to inform the Committee of these errors. In an effort to ascertain what happened at the 31 March hearing, the following exchange took place at the 30 June 2004 hearing:

**Senator COLBECK** – I would like to ask a question based on what happened at the hearing on 31 March, because I asked a question at that hearing about the spreadsheets and about having them checked by a third party. It was in relation to the 2001 committee report that recommended exposure of an IRA to a third party. I asked whether you had had the spreadsheets checked by a third party with respect to the apple IRA. Your response to me was:

The spreadsheets have been verified as presenting an accurate electronic transcription of the model as presented in the printed report.

**Ms Harwood** – That is absolutely correct. The model is correct. The electronic transcription of the model is correct. There was, and there is, no error in the model. The only thing there is is that several input values in the printed report – data points that are entered into the model – are incorrectly presented in the printed report. The correct input values are in the PDF filed on the Web. So the model has been verified both internally and by the RS statisticians as implementing correctly the model, formulation and syntax as presented in the written report.

**Senator Colbeck** – So you are saying that the model as presented in the printed report is correct?

**Ms Harwood** – That is correct.

**Senator Colbeck** – But there are transcription errors with respect to some of the input data items.

---

16 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 2

**Ms Harwood** – Yes. Some input data points in the printed report are printed wrongly; they have the wrong value there. As I said, there are about 1, 150 data points in the apple report and about 10 of those are not correctly entered into the printed version of the report.

**Senator Ferris** – But when Senator Cherry, I think it was, asked that question of you, Ms Harwood, you gave really only half the answer, in the sense that you answered the end point but you did not say what you already knew and that was what you have just said to us then – that there were some errors. So it meant that when the growers discovered those errors the whole question of Biosecurity's credibility was quite rightly questioned. I do not understand why, when you had the opportunity in response to Senator Cherry's question to give a full answer, you only gave half the answer. It seems to me that, as a result of that, you have brought yourself a bucket load of trouble because your whole credibility is now on the line. If you had answered the question in the first place as truthfully as you knew, we might not have been here today asking questions like we are.

**Ms Harwood** – The question I was asked was: has the model been verified as correct? I gave a correct answer to that: that the model had been verified.

**Senator Ferris** – But you could have said 'however'. We on this Committee already knew that we were into the 'however' on bananas – Biosecurity, the whole industry all over again, your credibility – and here we are in the same position again. I just do not think it does Biosecurity any good with industries.<sup>17</sup>

4.26 The then Acting Secretary of the Department of Agriculture, Fisheries and Forestry, Mr Wonder, was asked to comment on whether he believed the right course of action had been followed by Biosecurity Australia "in not advising formally that there was a difference between the hard copy document, which was publicly distributed, and the material on the web site which contained the corrected tables?".<sup>18</sup> Mr Wonder responded by saying that:

... At the time, my understanding is that BA were firmly of the view – and I understand the position – that they did not have something on their hands that actually changed in any way the findings of the report. They were also, as I understand it, of the view that the errors that were there had not in any sense led to incorrect analysis or incorrect modelling; they had verified results subsequently. They still obviously felt at the time that they had a substantive document that was useful and appropriate for responding to as a draft report. I underline the fact that it was a revised draft. It was not a final document. I do understand the position and perspective that they took at that time.

...

---

17 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 31-32

18 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 33

... Had we known that the issues that are being discussed here today might have unfolded the way they have then I accept that we would ask ourselves whether that was the best way to do it. We would have to reflect on that. As I say, it is great to be wise in hindsight. I believe that at the time the analysis was comprehensive. The findings are correct, the IRA panel's recommendations are unaffected and there is a substantial draft report there for the community and industry to respond to. We are now in a position where we still have a viable way forward to go to the final report that is not in any way, I do not believe, threatened by the events to date.<sup>19</sup>

4.27 The Committee finds this view disturbing. The then Acting Secretary accepts that Biosecurity Australia is asking stakeholders to comment and review a document and thereby contribute to the IRA process, but does not believe that Biosecurity Australia have a responsibility to keep these organisations and individuals 'in the loop' by ensuring that they are made aware of any corrections made to the document. The Committee believes that Biosecurity Australia needs to do more than "reflect" on "whether that was the best way to do it". Posting corrections on the web site has been demonstrated to be less than effective in informing all stakeholders of any changes to IRAs.

#### **Recommendation 4**

**4.28 The Committee recommends that Biosecurity Australia review its communication channels with Australian stakeholders and actively seeks to inform stakeholders of any amendments and other developments.**

4.29 The Committee notes that following the February 2005 hearing with Biosecurity Australia, the responses to the Committee's questions taken on notice were both timelier and more informative. The Committee is encouraged by this apparent change in Biosecurity Australia's attitude and would encourage Biosecurity Australia to actively seek to mend any credibility difficulties with their Australian stakeholders.

#### **Open and transparent process**

4.30 Compounding Biosecurity Australia's communication problems is the belief held by many stakeholder organisations that claims of an open and transparent process has not translated to actions, particularly in relation to the consultation process.

4.31 The issue of consultation was raised by the Committee's predecessor during the earlier inquiry into the proposed importation of apples from New Zealand. In the 2001 Interim Report, the Committee explored the consultation undertaken during the risk assessment and made specific recommendations in relation to the development of guidelines which specify the purpose and method of consultation to be used during the IRA process. The Committee also recommended the establishment of a Risk

---

19 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 33



---

Assessment Committee "to allow for the direct involvement of domestic stakeholders during the conduct of IRA's."<sup>20</sup>

### ***Biosecurity Australia - Defensive to criticism***

4.32 The then Executive Manager of Biosecurity Australia, Ms Mary Harwood, advised the Committee that the purpose of releasing the revised draft IRA was to draw scientific and technical comment on the regime being proposed. Ms Harwood told the Committee that the report:

... is open to anyone in the world who wishes to comment on the science and the way it is brought to bear on judgement of risk and presentation of quarantine measures.<sup>21</sup>

4.33 However, during the Committee's inquiry it became clear that industry representatives are concerned about the limited extent to which Biosecurity Australia has allowed the revised draft IRA document to be open to public scrutiny and critique.

4.34 The Tasmanian industry was critical of the consultation process, describing it as having "not been open and transparent enough."<sup>22</sup>

4.35 APAL described Biosecurity Australia's level of defensiveness toward the IRA document as 'alarming', and told the Committee that:

We keep hearing statements like: 'It's the most transparent process in the world,' and, 'This is an excellent document,' and 'This is a thorough document,' and so on. I went to three of those meetings and not once did I hear anyone from Biosecurity Australia say, 'That is a good point that we need to consider.' All criticisms were always met with very defensive attitudes.<sup>23</sup>

4.36 These sentiments were echoed by Apple and Pear Growers Association of South Australia:

I think the point has been made that once a document is put out and they start to talk about it, Biosecurity become very defensive of the document and it is very hard then to put the issues into the document.<sup>24</sup>

4.37 A representative of the Queensland Fruit and Vegetable Growers, Mr Ugo Tomasel also suggested that there was a perception amongst growers that Biosecurity Australia was disinclined to accept, or even consider, alternative scientific views.<sup>25</sup> Mr

---

20 Senate Rural and Regional Affairs and Transport Legislation Committee, *The Proposed Importation of Fresh Apple Fruit from New Zealand, Interim Report*, July 2001, p. xxiii

21 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 27

22 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 49

23 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

24 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 46

25 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 55

Tomasel argued that Biosecurity Australia was defensive of its position and therefore not open to the views of growers:

My interpretation of the attitude is that they believe so strongly in this document that they never seem to question the possibility that they have made a mistake in any shape or form. That is another area that concerns me because we all make mistakes and there are some weaknesses in every document. Because the disease is such a devastating disease everyone has to be absolutely sure that everything is done correctly.<sup>26</sup>

4.38 In response to criticisms, representatives of Biosecurity Australia told the Committee that there had "been ongoing communication with stakeholders during the preparation of the revised draft IRA report".<sup>27</sup> The Committee was also told that regular updates on the progress of the IRA had been provided to industry representatives, scientists and officials in both Australia and New Zealand. Biosecurity Australia also argued that there had been "a flow of technical information through the scientific liaison point nominated by Apple and Pear Limited Australia – APAL".<sup>28</sup>

4.39 Officers representing Biosecurity Australia were also asked how many of the suggestions or comments made at stakeholder meetings had fed back to the panel and "caused changes to be made to their thinking?".<sup>29</sup>

4.40 Ms Harwood responded by stating:

If there is going to be a change in thinking, that has yet to happen. The panel does not sit there in Shepparton and think: 'Oh, must rewrite recommendation.' They take the concern on board and think: 'Oh, that is something we need to consider,' but they have yet to start the process. What we also have, if you look at it, is a huge body of comments that arrived, including 500 pages of technical submission from the industry. The panel's job is to look at every one of the issues raised in those comments and to deal with them transparently and openly and come to a final set of recommendations.<sup>30</sup>

4.41 The Committee understands the growers' perception has developed in the context of assertions made by Biosecurity Australia about the openness and transparency of the process. Indeed, in undertaking its inquiry into Biosecurity Australia's administration of the IRA on Pig Meat, the Committee was informed that "Australia's IRA process is unusually transparent."<sup>31</sup> However, the Committee is

---

26 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 56

27 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 1

28 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 31 March 2004, p. 1

29 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 42

30 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 42

31 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 8 March 2004, p. 17

---

unconvinced that the importance of transparency may not apply equally to all aspects of the IRA process. It is noted that in evidence to the Committee, Biosecurity Australia applied the notion of transparency to the risk modelling process itself:

The import pathway steps are modelled in a way such that they are independent and the relational syntax between them in the modelling is very transparent and clearly defined.<sup>32</sup>

4.42 The Committee accepts Biosecurity Australia's need to have the IRA Panel examine the new information before making a comment and that this cannot take place in the context of a public meeting. However, the Committee believes that Biosecurity Australia needs to find a way to make public consultation a more meaningful exchange between itself and growers/producers who attend the public meetings.

### **Recommendation 5**

**4.43 The Committee recommends that Biosecurity Australia reviews its public consultation programs to provide forums for meaningful exchange between themselves and stakeholders.**

### **Recommendation 6**

**4.44 The Committee recommends that Biosecurity Australia reconsiders the Committee's predecessor's recommendation to develop guidelines which specify the purpose of the consultation so that all who attend public meetings have the same understanding of the nature of the outcomes that can be expected.**

### *Availability of evidence*

4.45 A further transparency issue emerged during the inquiry. The Committee heard in evidence that unpublished papers were used as reference material for the revised draft IRA. Particular reference was made to a New Zealand research paper authored by Hale and Clark in 1992.

4.46 APAL argued that while this paper had been used during the revision of the IRA, a number of people who were preparing submissions in relation to the revised draft IRA had been unable to obtain copies of the paper in order to respond to it.<sup>33</sup> It was further argued that this was not "a good enough level of scientific input to used in a revised draft IRA."<sup>34</sup>

4.47 In its submission, APAL further stated that Integrated Fruit Production (IFP) as practiced in New Zealand, results in increased quarantine risks. The case for this is suggested by the argument that the practice of IFP allows previously suppressed

---

32 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 8 March 2004, p. 22

33 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, pp. 14-15

34 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

secondary pests (such as Apple Leaf Curling Midge) to increase. APAL indicated that because the industry has been unable to access the New Zealand Integrated Fruit Production Manual, it has been denied the opportunity "to offer a full and comprehensive review and report on a document referenced in the RDIRA and considered an integral part of the decision making process of the IRAT."<sup>35</sup>

4.48 Acknowledging the issue raised by APAL, the Committee requested that Biosecurity provide it with copies of both New Zealand's Integrated Fruit Production Manual, and the paper prepared by Hale and Clark referred to in the revised draft IRA report.

4.49 The Committee was advised that the Ministry of Agriculture and Forestry of New Zealand (MAFNZ) had informed Biosecurity Australia that the Integrated Fruit Production Manual is the property of New Zealand Pipfruit Ltd and that the company did not wish to release the document in its entirety.<sup>36</sup> Biosecurity also indicated that it did not have permission from either MAFNZ or PNZ to provide the Committee with a copy of the Hale and Clark paper for 'external distribution'.<sup>37</sup>

4.50 The Committee is very concerned about the difficulties being experienced in gaining access to scientific research material. In its interim report, the Committee's predecessor specifically recommended "that Biosecurity Australia immediately commission research by the CSIRO, the NZ Horticulture and Food Research Institute or independent authorities into whether export-ready apples from New Zealand can carry viable colonies of *Erwinia amylovora* in their core, calyx or flesh".<sup>38</sup>

4.51 Unfortunately, the Committee's recommendation was not acted upon and Biosecurity Australia now finds itself in the situation where it is using New Zealand research, over which it has no control – either in relation to the research itself or the distribution of scientific papers.

4.52 The Committee agrees with APAL's argument that unpublished papers are not of a sufficient standard of scientific input for an IRA. It is of the opinion that in the interests of transparency, stakeholders have the right to respond to all scientific research papers used in the preparation of the draft IRA, and, as such, they should be publicly available documents. The Committee was prepared to make a recommendation requiring Biosecurity Australia only to use research material that was, at a minimum, available to all stakeholders, but preferably publicly available. It is reassured by the recent advice from Biosecurity Australia. This advice indicates that

---

35 Apple and Pear Australia Limited, *Submission 1B*, p. 18

36 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, Attachment A, p. 5

37 Biosecurity Australia has written to MAFNZ seeking a response to the Senate's interest in obtaining a copy of the Hale and Clark paper.

38 Senate Rural and Regional Affairs and Transport Legislation Committee, *The Proposed Importation of Fresh Apple Fruit from New Zealand, Interim Report*, July 2001, p. xxiv

---

while it "continues to seek permission from the authors to make these documents publicly available",<sup>39</sup> if it fails to secure such permission "the documents will not be relied on by the IRA team".<sup>40</sup>

### *Accountability – the Appeals Process*

4.53 One of the best ways to have an open and transparent process is to have some form of accountability. The IRA process as established in the Handbook does provide for two specific forms of appeal process; an appeal to the Deputy Secretary of the Department of Agriculture, Fisheries and Forestry, or an appeal to the Import Risk Analysis Appeal Panel.

#### *IRA Handbook – appeals process*

4.54 The first appeal can be made at the beginning of the IRA process. Stakeholders may appeal the decision relating to "the proposed scope and approach of the IRA and the required expertise, including membership of the IRA team."<sup>41</sup> Any appeal must be made within 15 days of the publication of the decision, giving specific reasons. The Deputy Secretary must consider the appeal, make a determination and notify the appellant with 45 days of the close date for appeals.

4.55 Stakeholders may also appeal the recommendations in the final IRA report. Appeals are considered by an independent Import Risk Analysis Appeal Panel (IRAAP).<sup>42</sup> The appeal must be lodged within 30 days of the publication of the final report and can be made on the following basis:

- there was a significant deviation from the process set out in the Import Risk Analysis Handbook that adversely affected the interests of a stakeholder; or
- a significant body of scientific information relevant to the outcome of the IRA was not considered.<sup>43</sup>

4.56 The IRAAP does not consider matters relating to:

- any matters that can be subjected to the first appeal process;
- the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered; or

---

39 Apples: Questions on notice for Biosecurity Australia – 9 February 2005, Answer to question 5

40 Apples: Questions on notice for Biosecurity Australia – 9 February 2005, Answer to question 5

41 *Import Risk Analysis Handbook*, Department of Agriculture, Fisheries and Forestry – Australia, Canberra, 2003, p. 24

42 *Import Risk Analysis Handbook*, Department of Agriculture, Fisheries and Forestry – Australia, Canberra, 2003, p. 17

43 *Import Risk Analysis Handbook*, Department of Agriculture, Fisheries and Forestry – Australia, Canberra, 2003, p. 17

- the merits of risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia.<sup>44</sup>

### *Criticism of the appeals process*

4.57 During the inquiry, the limited basis for appealing the final recommendations in the IRA report was raised as a matter of concern. APAL questioned why the scientific merit of the IRA should not be appealed:

... we cannot appeal the grounds of the scientific merit of the revised draft IRA. What that means is that Biosecurity Australia have set themselves up as the ultimate arbiter in Australia on the interpretation of various research papers. We are not allowed to appeal on the grounds that they have misinterpreted, misread or taken into account inappropriate research material.<sup>45</sup>

4.58 The concern was reiterated in responses APAL provided to questions taken on notice during the 20 June 2004 hearing:

... At the moment, with no appeal allowed on their judgement, they are deemed to be the highest authority in Australia on matters pertaining to IRAs. This is, in itself, a matter open to debate.

...

Closing down the avenues of appeal denies stakeholders their natural right to be heard and makes unnamed people with unknown qualifications and unknown interests ultimate arbiters of the future of the industry.<sup>46</sup>

4.59 It may be that the consultation process will permit matters such as the use of science and the appropriateness of that science, to emerge and be discussed. It could be argued that it is at that stage of the process where such differences can best be explored. However, the Committee has already examined concerns over the efficacy of the consultation program (see paragraphs 4.30 to 4.44).

4.60 Further, the Committee heard evidence suggesting that differing view points were not considered. Mr Ugo Tomasel, a fruitgrower from Stanthorpe, Queensland, indicated that a number of technical experts had found problems with the IRA, but that they were being ignored:

I will give you an example of what I mean. The Queensland apple industry commissioned a review of some of the key scientific aspects of the IRA by two respected and experienced scientists. They have looked at four research

---

44 *Import Risk Analysis Handbook*, Department of Agriculture, Fisheries and Forestry – Australia, Canberra, 2003, pp. 25-26

45 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15

46 Answers to Questions Taken on Notice by Apple and Pear Australia Limited, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, p. 5

---

papers that Biosecurity quoted to support cold storage treatment. They found that only two of these gave any support to their argument, but their real concern was that they found six other international research papers that said fire blight survives quite well in cold storage. Why were these six reports not considered?<sup>47</sup>

4.61 The Committee notes the perception amongst industry representatives that Biosecurity Australia has been selective in its use of scientific research material. APAL advised the Committee that while there are many references in the Handbook to the use of independent reviewers, the revised draft IRA does not mention that any person outside Biosecurity Australia or the IRA panel has reviewed the document in any way. APAL would like to see the document reviewed independently by scientists disinterested in the outcome.<sup>48</sup>

4.62 In relation to the example cited by Mr Tomasel, the Committee accepts Biosecurity Australia's assurance provided at the hearing of 9 February 2005:

I guess the response to that is that we are looking at cool storage and the survival of bacterium on the surface of mature fruit as the measure.<sup>49</sup>

4.63 On the question of an independent review of the IRA report the Committee supports the advice by Biosecurity Australia that the Eminent Scientist Group will "consider the draft Final IRA report to ensure that stakeholder comments have been properly taken into account".<sup>50</sup>

4.64 The establishment of the Eminent Scientists Group was one of a number of measures announced by the Minister for Agriculture, Fisheries and Forestry on 15 July 2004. The Eminent Scientists Group will independently examine the draft Final IRA reports prior to their release. The Group will have the following specific functions:

- Review the draft IRA Report prepared by the IRA Team to ensure that the IRA Team has adequately considered all technical submissions received from stakeholders during the formal consultation period on the draft IRA report; and
- Within 60 days of being presented with the draft Final IRA report, prepare a report to the Director of Animal and Plant Quarantine on their findings and recommend any action considered necessary to overcome

---

47 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 53

48 Answers to Questions Taken on Notice by Apple and Pear Australia Limited, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 30 June 2004, pp. 1-5

49 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 9 February 2005, p. 5

50 Answers to Questions Taken on Notice by Biosecurity Australia, Inquiry into the Import Risk Analysis for Apples, Public Hearing, 9 February, question 2

any identified deficiencies. The Eminent Scientists Group will provide a copy of the report to the Executive Manager, Biosecurity Australia.<sup>51</sup>

4.65 The Committee hopes that the establishment and work of this group will allay the growers concerns that the issues they raise will be considered and appropriately addressed.

4.66 The independence of Biosecurity Australia has been further strengthened by its establishment as a prescribed agency. Significantly, as a prescribed agency Biosecurity Australia will be financially separate from the Department of Agriculture, Fisheries and Forestry and have a separate outcome statement.<sup>52</sup> However, it remains part of a Department of State and is "subject to all the usual responsibilities and accountabilities to Parliament, the Government, Ministers legislation and audit arrangements etc and any associated directives that would normally arise from these responsibilities and accountabilities."<sup>53</sup>

4.67 The Minister's announcement noted that the appeals process will remain unchanged.<sup>54</sup>

#### *Criticism of IRA handbook*

4.68 Finally, industry representatives were also critical of the IRA handbook and the current process for amending its provisions. APAL made the following comments in relation to the handbook:

... Biosecurity Australia write the handbook. They write the rules by which we play the game. We are into another edition of the handbook which is quite different from the original. Clearly, Biosecurity Australia did not really like the rules they wrote the first time so they threw them out and wrote another set. This is an issue for us – it is a problem.<sup>55</sup>

4.69 The Committee notes that the handbook has been reviewed and updated in the time that the IRA for apples was first commenced. The first draft IRA for apples was released on 11 October 2000, several days after the establishment of the new Biosecurity Australia. The majority of the work for the first IRA had been conducted by AQIS. The new body revised the IRA process and it was the revised process that

---

51 Department of Agriculture, Fisheries and Forestry, *Animal Biosecurity Policy Memorandum 2004/15, Plant Biosecurity Policy Memorandum 2004/22, New Arrangements to Strengthen Import Risk Analysis*, p. 1

52 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 9 February 2005, p. 1

53 Correspondence between the Interim Chief Executive, Biosecurity Australia, and the Committee dated 25 February 2005

54 Department of Agriculture, Fisheries and Forestry, *Animal Biosecurity Policy Memorandum 2004/15, Plant Biosecurity Policy Memorandum 2004/22, New Arrangements to Strengthen Import Risk Analysis*, p. 2

55 RRAT Legislation Committee, *Transcript of Evidence*, Canberra, 30 June 2004, p. 15



was followed for the apples revised draft IRA. The Committee understands that in straddling two different processes, the Australian growers unfortunately have been required to come to terms with two different sets of requirements.

4.70 The Committee notes that Biosecurity Australia have indicated that following the recent changes in the IRA process with the announcement of the Eminent Scientist Group and the review and reissue of current draft IRA reports "Consideration will be given to amending the IRA Handbook".<sup>56</sup> However, no timeline has been indicated. The Committee asks that Biosecurity Australia considers the dislocation that may result to active IRAs when the guidelines to the process are revised during the conduct of the process.

---

56 Biosecurity Australia, Apples: Questions on notice for Biosecurity Australia – 9 February 2005, Question 6

