



Response to Question on Notice from the Senate Rural and Regional Affairs and Transport Committee

During the Australian apple and pear industry presentation to the Committee on 30th June, Senator O'Brien asked that the changes to the IRA Handbook that disadvantage the industry be elaborated. In response the following points are offered:

1. Between the publication of the DIRA in 2000 and the RDIRA in 2004, the Handbook was rewritten.
2. BA is the author of the Handbook and is able to re-write or alter the Handbook and, in effect, change the rules.
3. During its presentation, the Australian apple and pear industry made no claim that the changes to the Handbook were made with the purpose of disadvantaging the industry or that the changes specifically disadvantage the industry.
4. The Australian apple and pear industry does have issues with the current Handbook. They are detailed in Section 3 of the industry's non-technical submission, which is reproduced below.
5. The evidence given to the Committee by Dr Irena Carmichael regarding the differences between naturally occurring bacteria on apples and those introduced through inoculation provides an excellent illustration of one of the industry's issues with the Handbook. The relevant passage is in section 3.6.3 has been produced in bold italics below.

3. Handbook Process

3.1 The IRA Team

The IRA Team (IRAT) was initially the Risk Assessment Panel (RAP) but the name was changed at the release of the new IRA Handbook in 2003.

The IRAT is however, not the group of people who carry out the work to complete and IRA. The IRAT can be compared to a Board of Directors who act on the information made available to them from the staff of the organisation for which they are the Board. The so-called IRAT was not the entire team conducting the RDIRA. The input to the IRAT was made, presumably, by BA staff members or contracted consultants. The RDIRA does not reveal the identity of these members of the team, nor does it give any indication of their qualifications. It is not even certain that the

official IRAT members know who it was who provided the advice upon which they made vital decisions regarding the RDIRA.

The Handbook states on page 12 that;

“Membership of the team (IRAT) is governed by the availability of the required technical expertise within Biosecurity Australia and, if necessary, the extent to which expertise outside Biosecurity Australia may be required.”

This clearly implies that the bulk of the team working on the revised draft IRA was BA staff members and also that the IRAT was merely the public face of a much larger team of contributors to the process.

The identity of these unnamed team members is important because the Handbook states that;

It is important that the IRA team members do not have vested interests in relation to the IRA, that they are able to exercise sound scientific judgement, and that the process is objective and seen to be objective.

If stakeholders and the general public do not know who the team members are then how can they be seen to be objective?

The Australian apple and pear industry believes that a full list of all contributors to the RDIRA should be published.

3.2 Technical Working Groups

The RDIRA notes on pages 1 and 2 that the IRAT established two technical working groups to assist in pest categorisation. The use of TWGs is an excellent step but the IRA process would have been strongly enhanced if the IRAT had continued to use the expertise of the TWGs as they worked through all the other issues. It is to be noted, for example, that the IRAT includes no specific expertise in entomology.

It should not be assumed that the members of the TWGs agree with the conclusions of the RDIRA. A review of the responses that will be received and the authors thereof should be undertaken to demonstrate the degree to which to the members of the TWGs disagree with RDIRA conclusions.

Page 15 of the Handbook states that;

The IRA team, on the basis of its research, and using input from TWGs and consultants as necessary, prepares the draft IRA report...

However, in this instance the TWGs were not used in preparing the RDIRA. The valuable expertise of these groups was used only in the process of pest categorisation. It is not clear why the IRAT dispensed with the services of the TWGs at such an early stage in the process and the RDIRA does not address the matter at all.

Page 16 of the Handbook states that”

The IRA team, on the basis of its research, and using input from TWGs and consultants as necessary, prepares a Final IRA report.

It is to be hoped that BA and the IRAT will consider the value of the TWGs and seek their expertise and input when preparing the Final IRA. These scientists have a view of the issues and, if they are expert enough to be consulted for one section of the process, surely can be regarded as having sufficient expertise to have input for the complete document, especially the Final IRA.

The Australian apple and pear industry believes that it is necessary to include input from the TWGs in the RDIRA and the final IRA.

3.3 Scientific Review Paper

In July 2002, in accordance with its then Handbook, BA issued a “Scientific Review Paper”. This paper commented on dealing with the issues raised in the submissions to the DIRA and made many general comments about the issues and the (then) RAP’s view about dealing with them. This paper cannot in any way be described as a scientific review. The Handbook issued in 2003 discusses the issuing of a Technical Issues Paper. On page 14 the Handbook states that;

The IRA team commences work by:

- ... preparing a technical issues paper

The technical issues paper:

- Summarises background and administrative matters pertaining to the IRA
- Lists the pests and diseases that the IRA team has identified as being potentially associated with the importation of the goods
- Categorises the pests and diseases (in some cases in a preliminary manner) according to whether they need to be considered in the subsequent risk assessment.

The technical issues paper may also include

- An outline of additional tasks identified at that stage, e.g. for technical working groups and consultants
- A list of potential independent peer reviewers

The document published in July 2002 did summarise background and administrative issues pertaining to the IRA but it did not cover any of the other points listed in the current Handbook. The document is also not a scientific review paper in that it does not review any science nor flag any research papers upon which the IRAT will base its work.

This step in the Handbook process has not been done and this is sufficient grounds, on its own, to insist that the process be recommenced.

3.4 Independent Reviewers

There are many references in the Handbook to the use of independent reviewers although the word “may” is usually included with any mention of such review. The RDIRA does not mention that any person outside BA or the IRAT has reviewed the document in any way. There is no comment as to whether there is any intention of submitting the document to independent peer reviewers and no comment as to how those reviewers will be selected.

The Australian apple and pear industry would like to see the document reviewed independently by scientists disinterested in the outcome.

For such a contentious IRA as this has proved to be, it would be expected that BA would be very keen to avail itself of the services of independent review as provided for in its own Handbook.

3.5 Consulting with the States

The Handbook states that States and Territories have a special role to play in the IRA process and talks about the importance of the “partnership approach” between BA and the States.

The Handbook provides for BA to consult with the States at two stages of the IRA process. The first is at the time that the IRA work program is being devised. The second is prior to the final IRA being published.

It would seem to anyone who is outside this process that the partnership approach between BA and the states has well and truly broken down. Most states are, like the apple and pear industry, preparing submissions to the RDIRA and these submissions are, the apple and pear industry is given to understand, for the most part critical of the document.

If the partnership between BA and the states is so important, why is there so little agreement? Why is BA pushing forward with a RDIRA to which there are so many objections even with their state-based colleagues?

Clearly the consultations with the states are not meaningful and have little or no bearing on the content of the RDIRA. BA seems even to reject the advice of state-based scientists, employing their expertise in only the most limited capacity (see Section 3.2 above).

This consultation process is either not taking place or is taking place only as a “window dressing”. If the Handbook calls for consultation then it needs not only to be done but also to be done with an approach that seeks meaningful input.

3.6 The Appeals Process

3.6.1 BA influence on the Final IRA

The process of producing a final IRA is totally in the hands of BA with reference to the IRAT. The final IRA must satisfy the Executive Manager of BA on a number of points. This means that, although the final IRA must comply with various stipulations around policy and international agreements, the final outcome will be strongly influenced by the philosophy surrounding the operations of BA and the philosophical approach of the executives who manage BA.

The Australian apple and pear industry has suspected for some time that the philosophy surrounding the operation of BA is that of free trade with executives at BA being proud of their role as “world leaders” in promoting Australia’s role in the construction of the trade “level playing field”. The difficulty is that the apple and pear industry does not want to have its low pest and disease status and its economy of operation sacrificed on that particular altar.

This is the reason that the processes for finalising an IRA and the appeals process outlined in the Handbook are so difficult to accept.

BA wrote the Handbook that sets the finalisation process and the appeals process into place and it is always a strong position for one protagonist to be able to write the rules by which all must “play the game”.

3.6.2 The Appeals Panel

The IRAAP is made up of four people, one of who is directly linked to the IRA (CPPO) and one of who is indirectly linked as s/he is a staff member of DAFF. By any objective standard, DAFF staff on the appeals panel have a conflict of interest.

There is no indication that all, or indeed any, of the IRAAP members have a scientific background and so it can be a matter for conjecture whether or not all or any of the IRAAP members will grasp the full import of the scientific arguments made in any appeal.

The appeals panel must be made up of appropriately qualified and independent people who can be clearly seen to have no conflict of interest.

3.6.3 Grounds for Appeal

The Handbook allows only two grounds for appeal. They are;

- Significant deviation from the process set out in the Handbook

- That a significant body of science was not taken into account in the IRA

The Handbook does not allow for appeals on the basis of

- The scientific merit of the IRA
- The merits of the risk management recommendations of the IRA

It is quite clear that the Handbook (written by BA) will have a major influence on the outcome.

Why should the scientific merit of the IRA not be appealed? If the unidentified team members (see Section 3.1 above) providing input to the IRAT misinterpret a piece of research, rely too heavily on what may be dubious research (see Section 12.1), fail to take into account differences or weaknesses in research methodology or fall into any other common trap in research they should be made to account for themselves. 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.

Similar comments can be made about the inability to appeal the merits of risk management recommendations. The available science can be used in many ways and one of them is to support what may be dubious risk mitigation measures.

When there are several pieces of research in one area and many arrive at different or mixed conclusions or point to a possible different approach, why should the judgement of the unidentified BA team members be taken to be better than anyone else's judgement? Why should not the interpretation placed on this research be questioned?

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.

The grounds for appeal against the final IRA must be revised.