

Chapter 4

Issues: administrative matters

Perception that the IRA process is subject to free trade pressure

4.1 There are clearly perceptions that BA's IRA process is or may be improperly biased by free trade considerations. The Queensland Dept of Primary Industries and Fisheries was concerned about 'the potential influence of the current international trade agenda on Biosecurity's decision-making process.' The concern is implicit in complaints by the Australian Banana Growers' Council (ABGC) that between the June 2002 and February 2004 drafts risk assessments have been downgraded allegedly without new scientific information.¹ Mr Collins of the ABGC said:

We believe that they have a predetermined outcome that they want to arrive at.²

4.2 Mr Peasley submitted that 'At an early stage I became concerned that issues other than science could be influencing proceedings':

...at the beginning of every stakeholder meeting in Australia, Australia's trade position and WTO obligations were stressed at length. While everyone involved in the process acknowledges that Australia has to meet international obligations, this emphasis on non-scientific issues had an adverse effect on the panel's ability to effectively communicate with stakeholders.³

4.3 Such perceptions may have been fostered by the fact that BA has also been involved in negotiating market access conditions for Australian exports.⁴ This may have led to perceptions that BA was motivated to maximise overall trade benefits, considering both imports and exports, rather than simply assessing import proposals independently on their scientific merits according to the IRA guidelines.

Comment

4.4 It is regrettable that such suspicions should arise. It would be even more regrettable if they were well-founded. It appears that such concerns have contributed to the poor relations between BA and key stakeholders during the banana IRA.

1 Submission 14, Qld Department of Primary Industries and Fisheries, p.2. Submission 6, ABGC, p.4.

2 Mr L. Collins (ABGC), *Committee Hansard* 13 April 2004, p.12.

3 Mr D. Peasley, submission 7, p.1. *Committee Hansard* 13 April 2004, p.45.

4 Ms M. Harwood (Biosecurity Australia), *Committee Hansard* 8 March 2004, p.1.

4.5 The Committee notes the recent initiatives by the Minister to reassure the community of the probity and independence of BA's process, by establishing BA as a prescribed agency independent of the Department, and by appointing a group of eminent scientists to assess stakeholder comments on IRAs.⁵ The Committee will continue to take an interest in reviewing the effectiveness of these new arrangements.

Whether IRA panel members represent their organisations

4.6 The banana IRA team comprises two people who are officials of Biosecurity Australia, two who are officials of the Queensland Department of Primary Industries, one who is an official of NSW Agriculture, one who is an official of AQIS, and one who is self-employed.

4.7 In a situation like this there may be some uncertainty about whether IRA panel members are appointed in the capacity of expert individuals, or as representing their organisations.

4.8 The Primary Industries Ministerial Council recently considered this and affirmed that 'scientists involved in the IRA process are independent and are not representing their jurisdictions'. The Queensland government in its submission to this inquiry agreed.⁶

Comment

4.9 The Committee agrees that IRA panel members should be regarded as independent experts, not as representatives of organisations which they may happen to work for. This reflects the fact that IRA reports are meant to be independent expert opinions, not statements of policy.

Need for appropriate records of panel deliberations

4.10 It appears that the IRA panel had no orderly procedure for minuting decisions or recording action plans.

4.11 According to Mr Peasley, some IRA panel meetings were minuted at the beginning of the panel's operation, but not later, and minutes were not brought back to the next meeting to be agreed to.⁷

5 Hon W. Truss, Minister for Agriculture, Fisheries and Forestry, *New measures to boost confidence in IRAs*, media statement 15 July 2004. *Government commitment to independence of Biosecurity Australia delivered*, media statement 1 December 2004. See also discussion of the role of the eminent scientists at hearing of the Committee's inquiry into IRA on apples from New Zealand: *Committee Hansard* 9 February 2005, p.8-9.

6 Primary Industries Ministerial Council communiqué, 19 May 2004, p.2. Submission 14, Queensland Government, p.2.

7 Mr D. Peasley, *Committee Hansard* 13 April 2004, p.48-9.

4.12 BA supplied summary notes of the panel meetings. These take the superficial form of minutes (list of participants; ‘the chair welcomed members...’ etc), but are extremely brief, and do not record debate, decisions, or action plans in any detail.⁸

4.13 Ms Harwood explained:

Ms Harwood—Once the panel has a draft risk assessment document and they are working on estimates of likelihood and the treatment of risk in their work, their working document is the actual draft risk analysis report or parts of it. They do not keep a record of ‘A said ... B said ... D said ...’ ...

Senator McLUCAS—But there must be a tracking of progress or some system that your operation puts in place that is fairly standard: ‘This is what we’ve decided; this is what we’ve yet to decide.’ All sorts of bureaucracies have these sensible, ordinary management systems.

Ms Harwood—It is actually a group of scientists working together to review particular issues and to form a considered and collective view on how to bring the science to bear on estimating likelihoods, risks et cetera through the different stages of the importation pathway. They record where they are up to in an up-to-date version of the draft import risk analysis report. That document evolves through time.⁹

4.14 The lack of clear minutes is relevant to the apparent confusion over whether the panel agreed to the contents of the draft IRA report, or merely agreed that it should be released. Mr Curll of NSW Agriculture commented:

I guess in the absence of any agreed set of minutes or record of panel meetings, it is difficult to determine what may have been agreed to and what consensus was arrived at.¹⁰

4.15 It is also relevant to the lack of clarity over dealing with minority or dissenting opinions on the panel, as discussed below.

Mr Peasley—I did ask on at least two or three occasions that my disagreement with the panel’s decision on risk assessment be recorded.

CHAIR—Was it?

Mr Peasley—I saw it being written down but I did not ever see anything published.¹¹

Comment

4.16 In the Committee’s view the lack of clear minutes of panel proceedings is not satisfactory.

8 Biosecurity Australia, answers to question taken on notice, 31 May 2004, attachment 1.

9 Ms M. Harwood (Biosecurity Australia), *Committee Hansard* 8 March 1004, p.6.

10 Dr M. Curll (NSW Agriculture), *Committee Hansard* 13 May 2004, p.2.

11 Mr D. Peasley, *Committee Hansard* 13 April 2004, p.48.

4.17 The panel's deliberations are not merely a scientific discussion: their outcome closely influences government decisions with potentially far-reaching consequences for the community. They should be recorded with the propriety needed for normal public service accountability. This does not necessarily mean there needs to be a verbatim transcript of a two day conference. It does mean there should be reasonable minuting of subjects discussed, lines of argument, resolutions, dissenting voices and further action needed. BA should provide secretariat services to ensure that this happens.

Recommendation 4

4.18 BA should provide appropriate secretarial support to ensure that IRA panels keep adequate records of proceedings.

Need for clear procedure for dealing with minority opinions

4.19 There appears to be some lack of clarity in BA's approach to dealing with minority or dissenting opinions on IRA panels.

4.20 In the case of the banana IRA it is clear that BA greatly desired a unanimous or consensus report. At the hearing of this Committee on 8 March 2004, BA described the 'job' of the panel as 'to develop a consensus report...

Ms Harwood— They keep at it until they have an agreed position, which they will record in the report...

Senator McLUCAS—... there must be points in the deliberations where there are different points of view.

Ms Harwood—That is correct.

Senator McLUCAS—Is that ever documented?

Ms Harwood—No, because they keep working on the issue until they have a consensus position on how that issue will be handled.... We expect our expert panels to continue until they are, together, satisfied that this is their collective and unanimous assessment of risk.¹²

4.21 In November 2003 BA avoided Mr Paton's suggestion that the IRA report should make it clear that not all panels members agreed with risk management by restricted distribution:

I got the impression at the meeting that others were not too enthused about this restricted distribution option either.... I said that I thought the report should have a statement which said that not all members of the committee agreed with that management option.

Senator McLUCAS—Did you get a response to that email?

Mr Paton—I think what happened from that was that the text of that particular section was modified to reflect that this was going to be an

12 Ms M. Harwood (Biosecurity Australia), *Committee Hansard* 8 March 2004, p.10,15.

extremely difficult option to pursue from a practical point of view. Other than that, no.¹³

4.22 BA avoided revealing to this Committee that Mr Peasley and Mr Paton disagreed with parts of the IRA, as discussed below.

4.23 Between the 1998 AQIS import risk analysis handbook and the 2003 BA handbook, there was a change in the reference to how disagreements should be treated. The 1998 handbook said:

The AQIS risk analysis team or the RAP is expected to present its recommendations on the basis of consensus. If consensus is not achievable, differences of view will be clearly identified.¹⁴

4.24 There is no similar reference in the current import risk analysis handbook. The Committee asked BA why this had changed. The answer did not explain *why* it had changed, but commented:

The 2003 Handbook no longer contains a specific requirement to achieve consensus or to report departures from consensus, although both are implicit in the current requirements. Importantly, the revised Handbook does not remove the right of IRA team members to express individual views... In essence, the policy has not changed, although it is expressed differently.¹⁵

General comment on minority opinions

4.25 The Committee does not see why there should be any sensitivity about the existence of minority or dissenting views on IRA panels. Panel members are appointed as expert individuals, and it is to be expected that their professional judgments may sometimes differ.

4.26 All views are grist to the mill for the stakeholders who wish to comment and for the eventual decision-maker. In the Committee's view the decision-maker is quite capable of making a decision on the totality of evidence. It cannot be argued that concealing minority opinions increases the quality of information available to the decision-maker.

4.27 In discussing this Ms Harwood seemed to draw a distinction between draft and final IRA reports. She seemed to suggest that a final IRA report ought to flag any minority views, but a draft report need not do so:

13 Mr R. Paton, *Committee Hansard* 13 May 2004, p.3.

14 Australian Quarantine and Inspection Service, *The AQIS Import Risk Analysis Process - Handbook*, 1998, p.18.

15 RRAT Budget estimates *Committee Hansard* 24 May 2004, p.96. AFF portfolio answers to questions on notice, budget estimates 24-25 May 2004, Q. MAB 05.

That document is not a decision, it is a draft regime deliberately released for public comment, for people to make technical comment on every aspect of it. It is several hundred pages long. As I said earlier, at the final report stage, I would expect that the panel would work through to a unanimous report. If they could not do that, we would identify differences of view.¹⁶

4.28 This implies that the decision-maker on the final report would have information (concerning existence of minority views) which is withheld from the stakeholders at the public comment stage.

4.29 The Committee does not agree. There is no logical difference between a draft and final IRA report in this matter. If anything the reverse would be true: it is more important that differences of opinion are disclosed at the draft stage, as this will inform stakeholder comments.

4.30 The Committee also notes Ms Harwood's comment:

In all of our IRA reports, if there is a matter on which there is a difference of view or uncertainty on the science, such as PMWS, that is dealt with in a transparent way in the document. It would refer to different scientific viewpoints and then say 'on balance the judgment is' or 'this issue at this point is this because of' whatever.¹⁷

4.31 This is not enough. 'On balance' leaves it ambiguous whether the matter is one where all the panel agree it is a line-ball decision, or one where panel members have firm but differing views and 'on balance' reflects the majority view.

4.32 **The Committee recommends** that the IRA handbook should have a procedure for handling minority or dissenting opinions on panels and reflecting them appropriately in IRA reports and draft reports. This is not a matter that should be left to individual IRA panels.

Recommendation 5

4.33 The IRA handbook should have a procedure for handling minority or dissenting opinions on panels and reflecting them appropriately in IRA reports and draft reports.

4.34 The Committee suggests that a likely role for the eminent scientists' group in reviewing IRA's would be to focus on any areas of disagreement among the panel.

Mr Peasley's minority report

4.35 BA's reluctant approach to minority views is shown by its treatment of Mr Peasley's minority report.

16 Ms M. Harwood (Biosecurity Australia), RRAT Committee budget estimates *Committee Hansard*, 24 May 2004, p.165. Similarly p.135.

17 Ms M. Harwood (Biosecurity Australia), *Committee Hansard* 8 March 2004, p.14.

4.36 In June 2003, when a draft of the revised IRA was with IRA panel members for comment, Mr Peasley made it clear that he disagreed with significant parts of it. In contemporaneous diary notes he recorded a conversation with the panel chair, Dr McRae, thus:

Cheryl said we would have to decide how we articulate my concerns - as a dissenting report or minority report. My concerns would have to be clearly articulated and presented to BA. She said it would not be fair to me or the Panel for my original email letter (of 10 June 2003) to be made public. I am to formulate my concerns as a minority report over the next 7-10 days.¹⁸

4.37 On 1 July 2003 he submitted what he explicitly called a ‘minority report.’¹⁹

4.38 There was conflicting evidence to this Committee as to what the intended fate of his minority report was. Ms Harwood of BA said:

In the case of Mr Peasley, he had given an outline of his minority views to the chair and he was asked whether he wanted those included. I asked him if he wanted them published with the report and he said he did not....

I said to him, ‘I’m quite happy to publish your minority report with the document when it goes out, so that people can see it,’ and he said: ‘No. Put the report out as it is. Let us have public comment on essentially the single report, the revised draft IRA report. Let that be the basis for consultation and for moving forward.’²⁰

4.39 Mr Peasley denied this:

The Risk Analysis Panel last met in Canberra on 11 September last year. This was the only time I could have been asked about whether I wanted my minority report to be included with the draft IRA report. I have no recollection of any offer being made on this occasion, and my diary does not contain any reference to any offer of this nature. As you will appreciate, this is a significant point, because I kept detailed diary notes of all meetings and teleconferences...

At the 11 September meeting I recall being asked what I wanted to do about my minority report. This is not the same thing as being asked whether I wanted the minority report to be included in the draft IRA. I indicated I wished to *review the next draft report* before making any decision about the minority report. [emphasis added]²¹

4.40 BA supplied a file note of 12 September 2003, which contradicts the point italicised just above. In it Dr McRae said:

18 Submission 7, Mr D Peasley, attachment O, diary transcripts, 19 June 2003.

19 Submission 7, Mr D Peasley, attachment I.

20 Ms M Harwood (BA), *Committee Hansard*, RRAT Estimates 24 May 2004, p.92.

21 Mr D. Peasley, correspondence 12 May 2004.

David told the meeting on 11 September that he does NOT want a report that he sent me... on 10 July 03... made public because his 10 July report does not represent his thoughts/ positions... David also told the meeting that his plan is now to leave making a decision about whether he will or will not even submit a minority report until *after the revised IRA document is released for stakeholder comment*. [emphasis added] Further, at the meeting, he agreed that the revised IRA report should be released as a document from the RAP with no reference to it representing a minority or majority report.²²

4.41 Mr Peasley's recollection of this episode continued:

I received the next draft on 10 November, and after reviewing it thoroughly forwarded detailed comments to the RAP chair on 1 December. In my covering [email] letter I stated:

'It is obvious that there are areas of disagreement on several key issues within the panel, particularly the risk assessment for Moko disease, however, these are not going to be resolved unanimously. I therefore support the release of the Draft IRA for stakeholder comment, hopefully with consideration of my suggested changes, in order that the Import Risk Analysis be resolved to a final recommendation as soon as possible. The concerns expressed in my minority report of June 30, 2003 remain valid.'

I do not recall any further question being asked about the fate of my minority report, and certainly did not request that it be kept confidential. Again, my diary does not contain any later record of an offer by Biosecurity Australia or of any response on my part.²³

Comment on evidence about Mr Peasley's minority report

4.42 The Committee prefers Mr Peasley's evidence on this matter. The Committee notes the following points:

- Mr Peasley's minority report of 1 July 2003, though nominally addressed to the chair of the panel, does not have the character of a document addressed to panellists in order to persuade them to change their minds. It has the name and character of a document addressed to the world at large in order to record a dissenting view after persuasion has failed. In this it contrasts with his letter of 10 June.²⁴
- Mr Peasley's email of 1 December 2003, quoted above, confirms this: he retains the hope of influencing the panel with certain 'suggested

22 Biosecurity Australia, answers to question taken on notice, 31 May 2004, attachment 1.

23 Mr D. Peasley, Submission 7, attachment K. Correspondence 12 May 2004.

24 For example his minority report, by contrast with his letter of 10 June, includes formal introductory matter which would be pointless in a private letter: 'I was included as a member of the RAP in February 2001 because of my knowledge and experience in horticultural aspects of banana production in Australia over a period of 30 years...' Submission 7, Mr D Peasley, attachment I.

changes' (9 pages of attached detailed comments and text edits²⁵); by contrast, he has abandoned the hope of changing the panel's mind on 'several key issues'; but he stands by his separate minority report which dealt with these issues, including many matters not mentioned in the detailed text edits.

- It is unlikely that the writer of such a document would want it to be permanently confidential. In that case it would have no purpose.
- Mr Peasley's comment about his 'detailed diary notes' is corroborated by the 12 pages of relevant diary transcripts covering two years which he submitted to the Committee.

4.43 As noted above, other evidence makes it clear that BA greatly desired a unanimous or 'consensus' report, or at least the appearance of it. On 8 March 2004, in answer to precise questions from the Committee, BA concealed the existence of Mr Peasley's minority report.²⁶

4.44 The discrepancy between recollections of the 11 September meeting (paragraphs 4.38-4.39 above) may have been a genuine misunderstanding. If so, Mr Peasley's email of 1 December should have shown BA that there had been a misunderstanding, and should have made BA seek clarification of what he wanted done with his minority report.

4.45 In the Committee's view it is most likely that after 1 December 2003 Mr Peasley did not press the question of what would be done with his minority report, and BA took advantage of this to let it drop out of sight. The Committee hopes that this would not have happened if the panel had had better secretarial support.

Discussion of BA's evidence on this matter

4.46 At the hearing of 8 March 2004, when the Committee did not know about Mr Peasley's minority report, in response to unambiguous questions BA concealed its existence:

Senator BOSWELL—So the document was unanimous, the IRA was unanimous?

Ms Harwood—It is a consensus report.... 'Consensus' means that all persons present agreed to the report being released, that it is a reflection of their scientific judgment and that it reports accurately their outcome.

CHAIR—What I have here is a consensus report by Lower Balonne water users that three out of 25 people entirely disagreed with, but they agreed to agree just to get the report out. We do not know if that goes on in this IRA committee.

25 Submission 7, Mr D Peasley, attachment K2.

26 Ms M Harwood (Biosecurity Australia), *Committee Hansard* 8 March 2004, p.14,15.

Ms Harwood—That is not the sort of consensus that I am talking about here. This panel genuinely agreed as a group of seven scientists that this report represented their judgment...²⁷

Dr McRae—Perhaps as the chair of the IRA team I should answer this. There were seven members of that team and, as I said, I chaired it. The report was unanimous. In other words, every one of those seven people agreed that we should release the document with the text as written.

CHAIR—Yes, but that is not saying they agree with it.

Dr McRae—Every single word of that text should be released.

CHAIR—You are still evading the question. What you just said does not mean that they all agreed with everything that was in it. They agreed to release the text as it was, but that does not necessarily say that they as individuals agreed with everything in it.

Senator BOSWELL—Did they sign off as agreeing with the report?

Dr McRae—Yes....

Ms Harwood—Everyone agreed with the report and with its release.²⁸

4.47 At a hearing on 13 May 2004 Mr Paton, an IRA panel member, said: ‘I can tell you quite categorically that I agreed to the release of the report but I did not agree to the full contents of that report.’²⁹

4.48 At later hearings, after the Committee had the benefit of Mr Peasley’s minority report and Mr Paton’s statement just quoted, Ms Harwood and Dr McRae explained themselves firstly, by conceding that some of their earlier evidence ‘could be read as giving the [wrong] impression’:

Ms Harwood—...On rereading the Hansard of 8 March, preparing for this hearing, I could see a couple of instances where my responses could be read as giving the impression that all members agreed with the entire contents. Some members held minority views.³⁰

Dr McRae—...On reading the Hansard of 8 March, I can see that there are a couple of instances where my answers could be read as giving the impression that all members of the expert panel agreed with the entire contents of the revised draft IRA report.³¹

27 Ms M. Harwood (Biosecurity Australia), *Committee Hansard* 8 March 2004, p.14.

28 Dr C. McRae & Ms M Harwood (Biosecurity Australia), *Committee Hansard* 8 March 2004, p.16.

29 Mr R. Paton, *Committee Hansard* 13 May 2004, p.5.

30 Ms M. Harwood (Biosecurity Australia), RRAT budget estimates *Committee Hansard* 24 May 2004, p.129.

31 Dr C. McRae (Biosecurity Australia), *Committee Hansard* 16 June 2004, p.1.

4.49 As well, Ms Harwood seemed to argue that they had been motivated by the fact that *the panel itself* had not wanted its disagreements to be known:

Mr David Peasley held a different view, but *I was operating on the basis that they had made a collective and very conscious decision* to release a single report. [emphasis added]³²

We genuinely attempted to answer the questions in good faith and, as I said on 24 May, *to respect and reflect the agreement of the panel* and the wish of the panel that the report be issued without minority or majority views. [emphasis added]³³

Comment

4.50 By concealing the existence of Mr Peasley's minority report, Ms Harwood and Dr McRae seriously frustrated the Committee's deliberations. The Committee acknowledges that they may have done this 'to respect the panel's wishes'; however, the panel's feelings cannot possibly override the officials' duty to give full and truthful answers to a parliamentary committee. Their actions wasted the Committee's time, and might be regarded as a contempt but for their belated clarifications.

4.51 The Committee notes that at hearings three weeks apart Ms Harwood and Dr McRae answered questions on this matter in almost identical words (see paragraph 4.48). The Committee regards coached evidence as unacceptable.

4.52 The Committee draws attention to relevant sections of the government's guidelines for official witnesses:

2.19 ...Officials should be open with committees and if unable or unwilling to answer questions or provide information should say so, and give reasons....

2.45 ...Also, if a witness believes, after perusing the record, that he or she has omitted some relevant evidence, the witness should, having consulted with the Minister (or departmental Secretary), seek leave of the committee to lodge a supplementary statement or to give further oral evidence.³⁴

4.53 The Committee suggests that appropriate BA staff could profitably attend one of the Senate's courses for government officials to refresh their understanding of their responsibilities in relation to these matters.

4.54 The Committee notes that the new Interim Chief Executive of BA, Mr Cahill, has been quick to clarify points in evidence where, on reading the transcript, he felt

32 Ms M. Harwood (Biosecurity Australia), RRAT budget estimates *Committee Hansard* 24 May 2004, p.135.

33 Ms M. Harwood (Biosecurity Australia), *Committee Hansard* 16 June 2004, p.11.

34 Department of Prime Minister and Cabinet, *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*, November 1989.

that there might have been some misunderstanding.³⁵ The Committee welcomes this responsible and open attitude and trusts that it will continue.

35 Mr J. Cahill, Interim Chief Executive, BA, correspondence 25 February 2005.