

CHAPTER FIVE

Conclusion

5.1 It is true, as DAFF pointed out to the committee, that "even the most stringent quarantine and biosecurity measures will not prevent calculated, deliberate smugglers from breaching quarantine".¹ And in this case, AQIS was facing a formidable task: a litigious, often uncooperative grower who apparently did not hesitate to have all possible evidence of illegal plant importation uprooted and burnt or destroyed by having the plants sprayed with Roundup at three o'clock in the morning.²

5.2 The committee heard from Mr Fred Ienco, who was employed at Evergreen Farms as the table grape supervisor from February 2001, that, after he had been questioned by AQIS as to the whereabouts of certain trees and vines on the day it executed the search warrant, (he indicated that he knew nothing about them) the owner sent him home but called him back later that afternoon:

Mr Ienco – ... I am not sure about the times, but at about 3.30 or four o'clock I was called back by the owner and was told that there were some vines on the property that were not supposed to be there and she told me to go and get rid of them.

After she told me where they were, I went and pulled them out and stuck them at the bottom of the tip, which was burning, and that was it. I went home after that. About one week or 10 days later, the owner called me again and told me that in relation to some trees in the citrus department – and that was not my department – AQIS had quarantined them and put their stickers on them. So I knew where they were after they had left. Everyone knew where they were, and he told me to go and continuously spray them with poison to kill them. He told me to go at about two o'clock or three o'clock in the morning. That is what I did. I did that two or three times until they were dead, and that was pretty much it.

Chair – Just out of interest, what did you spray them with?

Mr Ienco – Roundup, straight.³

5.3 The committee does not underestimate the task AQIS was faced with. But the difficulty of that task cannot be used as an excuse for not doing everything possible under Australian federal and state laws to find out where the plants under investigation had come from and who might have brought them into Australia. Had those responsible been brought before the courts, a clear message would have been sent to those who contemplate breaching the quarantine laws of this country.

1 *Submission 12*, Department of Agriculture, Fisheries and Forestry, p. 2

2 Mr Ferdinando (Fred) Ienco, *Committee Hansard*, 15 June 2005, p. 2

3 Mr Ferdinando (Fred) Ienco, *Committee Hansard*, 15 June 2005, p. 2

5.4 The majority of witnesses from Emerald who made written submissions to the inquiry and appeared before the committee were critical of AQIS' response in the weeks and months following the 'Redline' call on 12 June 2001, and of the pace of the subsequent investigation. The poor quality of the investigators' record keeping, the delay in taking action and the failure to pursue apparently obvious avenues of investigation support those criticisms and the committee is of the view that the 2001 investigation was, at best, poorly handled.⁴

5.5 The following two statements in DAFF's submission seem to sum up AQIS' position towards the possible illegal importation of plant material on Evergreen Farms:

As Mr Gillies had alleged that the grape cuttings had been smuggled from California, AQIS was particularly concerned with the potential for the introduction into Australia of Pierce's Disease which was devastating crops in California.⁵

If you go back to the submission that we provided to the committee, the issues at the time were particular focused on the grape crop, not on the citrus crop. There was no indication that there were 'quarantinable' diseases in the citrus crop so we took action to contain any problems that might emanate from the grape crop, not from the citrus crop.⁶

5.6 AQIS' officers were extremely concerned about the grape crop becoming infested with Pierce's disease. They were understandably relieved when tests showed that the vines from which they had obtained samples were free of that disease. Other grape plants in the area seemed to have been uprooted⁷ but fortunately, from a potential pest invasion point of view, those plants seemed to have been destroyed.

5.7 The Committee notes regretfully that once the farm was clear of Pierce's disease, AQIS adopted a relaxed approach to the point of showing a lack of concern. In relation to the citrus trees, the discovery of a potentially 'benign' strain of citrus tristeza virus caused AQIS investigators to relax even more and not to pursue investigations with the rigour that one would have hoped.

4 Note: For example, it took over one month before a statement was sought from the informant, Mr Wayne Gillies. [Affidavit from Mr Stephen Ronald Watson, AQIS Compliance Officer, dated 7 August 2001, tendered in the Federal Court of Australia, p 2, *Tabled Documents (DAFF)*]

5 *Submission 12*, Department of Agriculture, Fisheries and Forestry, p. 11

6 Ms Gordon, *Committee Hansard*, 1 March 2006 p. 14

7 Affidavit from Mr Stephen Ronald Watson, AQIS Compliance Officer, dated 7 August 2001, tendered in the Federal Court of Australia, p 2, *Tabled Documents (DAFF)*

Initial testing of the citrus material showed no evidence of citrus canker. It indicated the possible presence of citrus tristeza virus; subsequent testing, completed in February 2002, identified an atypical strain but there was insufficient evidence to confirm it was exotic to Australia. It is relevant to AQIS's management of this finding that only those strains of citrus tristeza virus that are exotic and likely to cause a serious disease in citrus, or that are currently controlled under State and Territory legislation because of the diseases they produce, are placed under quarantine control. *Many strains of the virus are benign and do not cause any disease symptoms in infected plants.* The strain identified was not under State quarantine control, nor was there evidence that it caused overt disease in the citrus on Evergreen Farms or neighbouring properties.⁸

5.8 AQIS seems to be so focussed on its important role of combating plant and animal pests that it appears oblivious to its other role under the Quarantine Act, which is to stop illegal importation of plants and animals that could potentially bring disease into Australia. If there are no deterrents to illegal importation, the country is at risk of being exposed to a number of pests that are prevalent overseas.

5.9 The committee heard evidence that a "significant number of international backpackers" worked at the Evergreen Farms in Emerald using the property's "extensive dormitory complex".⁹ There were also rumours circulating in the town that workers from a citrus property in the Philippines were coming to work on the farm for short periods of time.

5.10 The fact remains that no serious attempt was made to establish the provenance of the citrus tristeza virus found for the first time in Emerald. Responsibility for pursuing illegal importation of plant material rests squarely with AQIS. The committee strongly believes that AQIS must work closely with the Australian Customs Service to establish whether it would be helpful to ask incoming visitors whether they intend to work on a farm immediately after arrival. This might be a first step to identifying potential problems in this area.

5.11 The evidence before the Committee strongly suggests also that no one would have questioned the quality of the investigation conducted by AQIS in 2001, had citrus canker not been discovered on Evergreen Farms some four years later. Having revisited that investigation, the Committee has formed the view that the origin of the citrus material found should have been pursued much more rigorously.

Failure to pursue investigations

5.12 The committee is well aware that the AQIS' investigation team is not a police unit, with the powers that such a unit might have. But there are examples of a serious reluctance on the part of AQIS to pursue issues that demanded to be investigated and the committee is very concerned that AQIS conducted its

8 *Submission 12*, Department of Agriculture, Fisheries and Forestry, p. 9

9 Mr Adriaansen, *Committee Hansard*, 12 August 2005, p. 17

investigation in such a way that it sent the wrong message to anyone contemplating bringing illegal plant imports into Australia.

5.13 For example, it beggars belief that AQIS failed to investigate what was in the locked room at the Evergreen Farms property, (referred to by various witnesses as 'the vault' or the 'bomb shelter') where the farm employees believed evidence of imported plant material might have been kept. AQIS' Compliance officer, Stephen Watson, stated in his affidavit to the federal court that:

We left the residence to return shortly after for an inspection of a downstairs room adjacent to the laundry. The door to this room was behind a full length mirror. This door was found to be locked and Ms King stated that it had never been opened and they did not have a key from the builder. We indicated that if necessary, we would force entry under the provisions of the warrant to inspect the contents of the room. However, we did not gain entry to that room. We did not conduct any further search of the residence.¹⁰

5.14 The search warrant gave AQIS' Compliance and Investigations Unit's officers the power to force entry to that room. Given that AQIS' staff had not gathered useful evidence from the farm's employees at that stage, the explanation given by the owner, namely that the key to the room had never been provided by the builder should have been enough to convince the investigators that they should find out what was behind those doors.

5.15 AQIS' mistake seems to have been to rely too heavily on the possibility that a scientific analysis of the plant samples taken would help them identify whether there was any foreign plant material involved. They failed to pursue other possible leads in the investigation in the face of the reluctance of the farm's employees to talk to them.

5.16 On this occasion, AQIS' officers were from outside the town. The committee is of the view that, given the sensitivities in many regional areas, AQIS should ensure that when its officers execute a search warrant, some Compliance and Investigations Unit's staff from an interstate unit should always accompany the local state-based staff.

Initial delays in the investigations

5.17 As described in Chapter 2, it took AQIS about six weeks after receiving the 'Redline' call on 12 June 2001 to obtain a search warrant and to ask for the involvement of the responsible state agency, (the Queensland Department of Primary Industries and Fisheries). In view of the seriousness of the allegations, the committee is very concerned that it took AQIS so long to act on that initial piece of information.

10 Affidavit from Mr Stephen Ronald Watson, AQIS Compliance Officer, dated 7 August 2001, tendered in the Federal Court of Australia, p 8., *Tabled Documents (DAFF)*

5.18 The committee was told that the matter was handled by two Compliance and Investigations Program (C&I) officers based in Queensland, one of whom came back from his annual leave to pursue the investigation. The search warrant was granted on 23 July 2001 and executed three days later.

Recommendation 2

The committee recommends that the Quarantine Act be amended to require a full inspection of relevant property and premises by AQIS' Compliance and Investigations Program officers within 3 working days of an allegation of illegal importation of material being brought to AQIS' attention.

5.19 The testing of the plant material collected on the day that the search warrant was executed took months to complete. It was 9 November 2001 before it was confirmed that citrus tatter leaf virus (CTLV) and a strain of citrus tristeza virus (CTV) had been detected on samples seized during the inspections of Evergreen Farms on 26 July.

5.20 The committee is concerned that the initial response to the Redline call shows that the AQIS C&I unit in Queensland did not have adequate capacity or experience to respond to the task at hand.

5.21 The committee understands that AQIS cannot have a large number of C&I staff posted in every state but it seems to the committee that a 'roaming' C&I unit, comprising three or four staff with high level investigative skills and experience could be developed and made available for work in any specific area when the need arises. This would ensure that unnecessary delays do not occur and that all the crucial aspects of an investigation are attended to in the early stages before valuable evidence gets lost.

Recommendation 3

The committee recommends that AQIS develop a special Compliance and Investigations (C&I) Unit drawn from permanent staff of the programme around the country and train it so that it can be sent at short notice to the appropriate area when the need arises. The committee also recommends that officers of the Australian Federal Police be involved in that training.

Conduct of inspections

5.22 AQIS' plant pathologist, Dr Vanessa Brake, gave evidence to the committee that she had visited Evergreen Farms five times.¹¹ The Deed of Arrangement between AQIS and the owners of the property (PCP) stipulated six inspections (see

11 Dr Vanessa Brake, Department of Agriculture Fisheries and Forestry, *Committee Hansard*, 22 June 2005, p.12

paragraph 4 of the Deed of Arrangement).¹² Several witnesses to the inquiry complained that AQIS had only made three visits. The committee notes AQIS' evidence that it conducted four out of the six visits agreed to under the Deed.¹³ Three of those visits were citrus inspections while one was a grape inspection that tends to be overlooked by the citrus growers.

5.23 Evergreen Farms is a 20 000 acre property. Various AQIS witnesses were categorical in expressing the view that "it is impossible to inspect the whole property in a day".¹⁴ Dr Brake gave evidence that she often had an assistant with her but that the best she could do was a 'targeted survey'. AQIS was positive that its inspections teams knew where to look.

5.24 Evergreen Farms employees gave evidence to the committee four years after the event, that the farm owner had asked them to move some of the plants under suspicion, that some vines had been uprooted and burnt and several citrus trees sprayed with Roundup, casting grave doubts as to whether AQIS' officers had been able to look at the real problem areas and whether they were in a position to keep track of plantings that needed to be monitored.

Adequacy of the visual inspections

5.25 In the committee's view, the visual inspection approach was a totally inadequate response to the possible outbreak of a pest such as citrus canker. The committee finds it difficult not to draw the conclusion that the very principles underlying AQIS' approach to the problem was fundamentally flawed. The focus of the surveillance program appears to have been to rely heavily on 'spot checks' which resulted in the citrus trees 'passing the test' when the aim should have been to do a thorough check that no tree was infested by any plant pest.

5.26 The committee is not suggesting that there was a premeditated plan to let the owners of Evergreen Farms 'off the hook', but rather that the trusting attitude that seems to have pervaded the investigation team was totally misplaced. Worse still, AQIS' officers give the distinct impression that they allowed themselves to be intimidated by the tactics used by the owners of PCP, including the threat of court action involving millions of dollars worth of damages.

5.27 The devastation visited upon Emerald by an exotic disease should serve as a lesson to potential quarantine offenders and to those who breach quarantine laws through carelessness. There are no winners after a plant or animal pest outbreak. AQIS' investigators must change the approach used in the Emerald investigation and pursue relentlessly those suspected of bringing illegal plants into Australia. As an agency that works on behalf of the people of Australia, it is commendable that it

12 Deed of Arrangement between Pacific Century Production Pty Ltd and Commonwealth of Australia, dated 22 October 2001, see daff.gov.au/corporate_docs/publications/pdf/quarantine/pr/pacific_century.pdf

13 Answer provided to AQIS02, Question on Notice, Budget Estimates, 25 and 26 May 2005

14 Dr Vanessa Brake, *Committee Hansard* 22 June 2005, p.16 and Mr Young, *Committee Hansard*, 22 June 2005, p. 15

should act with procedural fairness, but that is a very different thing from blind trust.

5.28 Although QDPI, the state government agency responsible for dealing with the 2004 citrus canker outbreak, appeared to have deployed more resources than AQIS had done during the first scare in 2001, the speedy visual inspection approach continued after the 2004 outbreak.

5.29 The incubation period for citrus canker is between 7 to 60 days.¹⁵ The committee was told that the disease is able to be visually detected with the highest accuracy approximately 107 days after infection. This suggests that a proportion of infections are subclinical and numerous small infestations of the disease are not accounted for until subsequent surveys.¹⁶ It is, therefore, very important not to assume in the earlier inspections that the trees in a particular area have escaped the pest.

5.30 The committee is not convinced that the type of visual inspection being carried out in late 2004 and early 2005 would have detected citrus canker threatening other 'blocks' of citrus trees early enough to ensure that the NMG adopt a more aggressive disease management plan earlier in the emergency. For all we know, the second and third citrus properties in Emerald might have already been infested with citrus canker by the time canker was found at Evergreen Farms.

5.31 The committee firmly believes that more inspectors must be deployed early in confronting any disease outbreak or potential outbreak. We are not advocating the employment of permanent expert staff for this purpose. Rather, AQIS should be able to liaise with appropriate university research centres, possibly through the Australian Biosecurity Cooperative Research Centre, to tap into the relevant expertise that could be made available in the event of an emergency.

5.32 The Australian Biosecurity Cooperative Research Centre, which came into operation after the citrus canker outbreak can now call on the resources of CSIRO, five universities, industry groups and several international agencies as well as federal and state government agencies in the fight against diseases and pests.

5.33 Farmers, growers and plant industry groups could also assist by making their employees available as 'checkers' for particular signs. The ready availability of online images should make it possible to train a large number of people in looking for early signs of a particular disease. Anybody spotting something unusual would be able to direct expert pathologists to the area of concern.

Delays in obtaining test results

5.34 The committee is also concerned that the delays experienced in obtaining tests results suggest that there was a lack of adequate resources in the diagnostic

15 Mrs Ransom, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 22 June 2005, p. 19

14 *Submission 2*, Australian Citrus Growers Inc. p. 4 (quoting Gottwald et al. 2002)

capacity to enable testing for plant pests and diseases to be conducted in a timely manner. A number of witnesses, including Australian Citrus Growers, Growcom and QDPI referred to this problem. QDPI saw the major diagnostic issues as being:

- The capacity to rapidly implement and scale-up diagnostic testing, particularly given that the diagnosis will be for unfamiliar/ irregular pests;
- Protocols that ensure appropriate access to testing capacity, regardless of jurisdiction or agency cross-overs, do not exist;
- Ensuring well-established standards (generally and for the specific diagnostic tests being implemented) are developed and adopted;
- Ensuring a multi-stage approach to diagnostics wherever possible, to reduce the potential for routine/non-suspect samples to 'clog' the critical diagnostic system elements;
- Appropriate tracking mechanisms from point-of-sampling to release of diagnostic result; and
- Establishing a diagnostics reference panel to deliberate on unresolved diagnostic outcomes, and to oversee the integrity of the diagnostic process.¹⁷

5.35 The committee welcomes this analysis and supports the call for an increase in the diagnostic capacity that AQIS may be able to deploy in the event of a suspected pest incursion. Should a similar situation arise, AQIS should be able to call on the assistance of other scientific plant organisations such as the CSIRO or some of the plant research units in the large universities to ensure that plant material is tested promptly.

5.36 AQIS told the committee that it recognised the need to "improve basic diagnostic and surveillance capacity within both the industry and government sectors".¹⁸ The committee welcomes this and it will monitor the way in which AQIS works towards building strong partnerships with all the relevant agencies in order to enhance its capacity to respond to any future pest incursion in a more timely manner.

5.37 The committee also sees the need for appropriate protocols to be developed so that all participating agencies use diagnostic techniques that are compatible and that assist the decision makers in their difficult task of combating the pests involved. Access to peer support could prove crucial in resolving issues that might arise when confronted with an unfamiliar plant pest in an emergency situation.

Recommendation 4

The committee recommends that twice a year, the Commonwealth Ombudsman review all investigations carried out by AQIS to assess whether

17 *Submission 9*, Department of Primary Industries and Fisheries, Queensland, p. 39

18 *Submission 11*, Department of Agriculture, Fisheries and Forestry, p. 18

they have been conducted by appropriately trained staff, in a timely manner, in accordance with all the relevant legislation and according to the rules adopted by AQIS' executive.

The whistleblower

5.38 Above all other matters raised by the citrus canker outbreak in Emerald and by its subsequent inquiry, the committee is concerned for the plight of the whistleblower in this case. As stated in Chapter 3 (para 3.83) growers are heavily reliant on their employees to detect plant pests. That holds true for the detection of illegal plant imports as well. If a grower himself is suspected of illegal importation, the employee may not have much choice but to blow the whistle on his employer – as happened in this case.

5.39 All the government agencies and the industry groups involved recognise that whistleblowers need protection and support. Queensland Citrus Growers, for example, told the Committee:

The outcome for the "whistle-blower" has been disastrous, and he should have been better protected. This is a serious disincentive for anyone to report similar concerns to AQIS in the future.¹⁹

5.40 QDPI also raised this issue in their submission:

Those who do detect and report must be left in no worse position than they were, prior to detection. There also needs to be greater recognition by the industry itself of those who do look, find and report – after all, these early detections will potentially save the rest of the industry millions in pest management cost and lost market opportunities.²⁰

5.41 QDPI pointed out that the principles of the Emergency Plant Pest Response Deed (EPPRD) encourage growers to look and report. While it is to be hoped that as a result all growers would act responsibly, if that does not happen, an employee may still find himself in the role of whistleblower.

5.42 Although Queensland and other states have passed legislation to protect whistleblowers, the difficulty lies in enforcing that legislation. It is relatively easy to do so when ensuring that a whistleblower is not summarily dismissed by an employer as a result of his actions although it can be difficult to prove that a dismissal is the direct result of blowing the whistle. It is almost impossible to ensure that whistleblowers and their families are protected from a myriad of other pressures (including taunts to their children), that could make life difficult for them and their families.

5.43 The committee's view is that agricultural industry bodies have a large role to play in educating farming communities to respect whistleblowers who may have

19 *Submission 1*, Queensland Citrus Growers, p. 2

20 *Submission 9*, Department of Primary Industries and Fisheries, Queensland, p. 36

gone out on a limb to protect the livelihood of the community. Industry bodies could also ensure that whistleblowers are given some form of official recognition by the particular industry involved and by the local community. This recognition could take the form of an award presented to the individuals concerned.

Bioterrorism

5.44 Finally, the committee has become aware through its investigation of the events in Emerald how poorly prepared AQIS appears to have been to deal with a disease outbreak. It would be even less prepared to deal with industrial sabotage or a possible bioterrorist attack. The committee has therefore come to the view that AQIS must take the steps necessary to ensure that it develops immediately an improved strategy to better deal with such an occurrence, that its staff are trained adequately and that it puts in place the communications infrastructure that will be required should such an attack occur.

5.45 The committee will require a briefing from AQIS before the end of 2006, of the changes that it would have made to its strategy to deal with the occurrences mentioned in the above paragraph.

Recommendation 5

The committee recommends that the Department of Agriculture, Fisheries and Forestry (DAFF) and AQIS, liaise with the Attorney General's department to develop a joint strategy to ensure that it is appropriately prepared to deal with any possible industrial sabotage or bioterrorist attack against Australia's primary industries.

**Senator the Hon. Bill Heffernan
Chair**