

# Chapter 1

## Introduction

### Conduct of the inquiry

1.1 On 27 November 2008, the Senate referred the following matter to the committee for inquiry and report by 19 March 2009:

Issues related to the import risk analysis (IRA) for the importation of Cavendish bananas from the Philippines, including:

- a) Biosecurity Australia's administration of the IRA process;
- b) The scientific and technical information relied upon by the IRA team;
- c) The feasibility of the risk management measures and operational arrangements proposed in the final IRA report; and
- d) The capability of the Australian Government and, in particular, the Australian Quarantine Inspection Service to monitor and enforce compliance with the risk management measures and operational arrangements proposed in the final IRA report.

1.2 The committee advertised the inquiry in the Australian and invited submissions from peak bodies and state and Commonwealth governments. The committee received ten submissions (see Appendix 1).

1.3 The Senate extended the reporting date to 14 May 2009 to enable the committee to take further evidence and further extended the reporting date to 22 May 2009 to allow the committee to complete its deliberations.

### *Decision to hold in-camera hearings*

1.4 The committee also notified interested parties and the public, via the newspaper advertisement and the committee website, that the hearings for this inquiry would be held *in-camera*. While it is the Senate's practice to hold hearings in public whenever practicable, the committee agreed that the sensitivities surrounding the IRA process warranted such an unusual step. In the committee's view, by hearing evidence in private the committee would be better positioned to inform itself fully on the issues under examination in a way which may not be possible in a public forum.

### Committee's 2005 inquiry

1.5 This is the committee's second inquiry into the IRA process for the importation of bananas from the Philippines. The Committee undertook an inquiry of its own motion under Standing Order 25(2) (b) in March 2004 following the release of the revised draft import risk analysis report released in February 2004.

1.6 The term's of reference for that inquiry were:

The administration of Biosecurity Australia with particular reference to the revised draft import risk analysis report released in February 2004 relating to the Philippines, including:

- the processes and research underpinning the analysis;
- the conclusions and recommendations; and
- related matters.

1.7 The committee tabled its report in March 2005. In reporting on the evidence received during that inquiry, the committee noted that it may review the topic following the release of a revised IRA report.

### **Scope of this report**

1.8 This report reflects the evidence received during the current inquiry. While the report does review matters considered in the 2005 report, the committee's intention is to reflect developments since the tabling of that earlier report rather than traverse old ground.

1.9 The remainder of this introductory chapter will provide a brief overview of the import risk analysis process.

1.10 Chapter 2 of the report considers the committee's first two terms of reference:

- a) Biosecurity Australia's administration of the IRA process; and
- b) the scientific and technical information relied upon by the IRA team.

1.11 Chapter 3 of the report considers the final two terms of reference:

- c) the feasibility of the risk management measures and operational arrangements proposed in the final IRA report; and
- d) the capability of the Australian government and, in particular, the Australian Quarantine Inspection Service to monitor and enforce compliance with the risk management measures and operational arrangements proposed in the final IRA report.

### **Acknowledgements**

1.12 The committee appreciates the time and work of all those who have provided oral and written submissions to the inquiry. Their efforts have assisted the committee considerably.

### **Background to import risk analysis**

#### *Australia's WTO rights and obligations*

1.13 The committee's 2005 report discussed in some detail Australia's obligations as a signatory to the World Trade Organisation's (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

1.14 As a WTO member Australia is obliged to consider all import requests from other countries concerning agricultural products. Decisions to permit or reject an import application can be made only on sound scientific grounds.

1.15 Analysis of import requests is conducted within an administrative process described in the Import Risk Analysis Handbook. During its earlier inquiry, the committee drew attention to concerns with regard to the IRA process applied in the case of the IRA for bananas from the Philippines. The committee notes that changes to the import risk analysis process announced by the Australian Government in 2006 were implemented on 5 September 2007, when regulations made under the Quarantine Act 2008 took effect. The Committee also notes that under transitional arrangements a small number of IRA's, including the IRA for the importation of bananas from the Philippines, are to be completed under the IRA process set out in the *2003 Import Risk Analysis (IRA) Handbook*. The Committee notes that the rationale for this is that these IRA's were either well underway or nearly completed at the time the revised import risk analysis process was introduced.<sup>1</sup>

### *The IRA process for the importation of bananas from the Philippines*

1.16 The IRA process for the importation of mature hard green banana fruit of four Cavendish varieties from specified areas on the island of Mindanao commenced in June 2000, following a formal submission from the Philippine Bureau of Plant Industry (BPI). An issues paper was released in May 2001, outlining the preliminary pest categorisation process, followed by a technical information paper in May 2002 containing the preliminary pest categorisation and reports on the technical working groups.<sup>2</sup>

#### *Draft reports and stakeholder consultation*

1.17 A draft IRA report was released in June 2002 and attracted 20 submissions from Australian and Philippines stakeholders. A revised draft IRA report was released in February 2004 in response to stakeholder comments and new technical information. An Addendum to that revised draft IRA report was released in June 2004, which included changes to the report and to the recommended quarantine conditions in response to an error detected in the Excel spreadsheet model used in the estimation of risk.<sup>3</sup>

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1 Biosecurity Australia Policy Memorandum 2007/20, 12 September 2007.

2 Biosecurity Australia, *Final Import Risk Analysis Report for the Importation of Cavendish Bananas from the Philippines*, Part B, November 2008, p. 7.

3 Biosecurity Australia, *Final Import Risk Analysis Report for the Importation of Cavendish Bananas from the Philippines*, Part B, November 2008, p. 7.

1.18 During 2005 BA undertook an extensive review of the technical information for each quarantine pest identified in the IRA and other technical issues documented in the submissions and reports, including further consultations with stakeholders.<sup>4</sup>

1.19 BA released a revised draft IRA for comment on 1 March 2007. This report included a minority view in Part A of the report provided by a member of the IRA team regarding the risk management measures for Moko as they were expressed in that draft of the report. Subsequent to the release of this draft, the IRA team met separately with an Australian stakeholder and considered new scientific and technical information and the March 2005 report of this Committee. The IRA team further developed the risk management section for Moko in light of the comments of stakeholders and the issues raised in the minority view.<sup>5</sup>

1.20 On 14 August 2008, BA formally referred the draft final IRA report to the Eminent Scientists Group (ESG).<sup>6</sup> As the Banana IRA was being conducted under the process set out in the 2003 Import Risk Analysis Handbook, the assessment undertaken by the ESG was conducted in accordance with its original terms of reference, which are to:

- review the draft final 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, and
- within 60 days of being presented with the draft final IRA report, prepare a report to the Director of Quarantine on their findings and recommend any action considered necessary to overcome any identified deficiencies. The ESG will provide a copy of the report to the Chief Executive of BA.<sup>7</sup>

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4 In August 2004 BA advised stakeholders of its intention to issue a further revised draft IRA report to address statistical issues raised by the Australian Banana Growers Council that would significantly alter the pest risk assessments. The Australian Government also undertook that, with the establishment of BA as a Prescribed Agency in late 2004, BA would review and reissue the draft IRA report. Biosecurity Australia, *Final Import Risk Analysis Report for the Importation of Cavendish Bananas from the Philippines*, Part B, November 2008, p. 7.

5 Biosecurity Australia, *Final Import Risk Analysis Report for the Importation of Cavendish Bananas from the Philippines*, Part B, November 2008, p. 8.

6 The Eminent Scientists Group was established in 2004 to increase confidence in the administration of the IRA process.

7 Eminent Scientists Group, *The report of the Eminent Scientists Group on the draft Final Import Risk Analysis report for the Importation of Cavendish Bananas from the Philippines to the Director of Animal and Plant Quarantine*, August 2008, p. 1.

The ESG's role was strengthened in September 2007 to take account of relevant new information brought to its attention, including assessing conflicting scientific views provided to it, to ensure that, in addition to the proper consideration of stakeholder comments, the conclusions of the IRA report are scientifically reasonable, based on the material presented. Refer: [http://www.daff.gov.au/biosecuritycoordination/eminient\\_scientists\\_group](http://www.daff.gov.au/biosecuritycoordination/eminient_scientists_group), (accessed 5 May 2009).

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1.21 The *Final Import Risk Analysis Report for the Importation of Cavendish Bananas from the Philippines* (the Final IRA report) was released in November 2008.

*Consideration by the Import Risk Analysis Appeal Panel*

1.22 Following the close of the appeal period for the Final IRA Report on 12 December 2008, the Chair of the Import Risk Analysis Appeal Panel (IRAAP) convened a panel to consider the five appeals received. The IRAAP reported its findings to the Director of Animal and Plant Quarantine and the appellants on 23 January 2009. The IRAAP was unanimous in not allowing any of the appeals received.<sup>8</sup>

*Policy Determination by Director of Quarantine*

1.23 On 3 March 2009 the Director of Animal and Plant Quarantine determined a quarantine policy for the importation of bananas from the Philippines. Under this policy, the importation of bananas from the Philippines may be permitted subject to the *Quarantine Act 1908* and the application of phytosanitary measures as specified in the Final IRA report. The policy will form the basis for consideration of import applications for bananas from the Philippines.

*Implementation of Policy Determination*

1.24 A detailed operational work plan between Australia and the Philippines would need to be developed at a government-to-government level when a request for an import permit is forthcoming from the Philippines. This work plan would need to be approved by the Australian Quarantine and Inspection Service before any import permits for bananas from the Philippines will be considered.

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8 Import Risk Analysis Appeals Panel, *Importation of Cavendish Bananas from the Philippines IRA – Appeal, Findings*, January 2009. Available at: [http://www.daff.gov.au/data/assets/pdf\\_file/0020/972110/official-findings-banana-IRAAP.pdf](http://www.daff.gov.au/data/assets/pdf_file/0020/972110/official-findings-banana-IRAAP.pdf) (accessed 5 May 2009).

