

Chapter 1

Introduction

1.1 The Quarantine Amendment (Disallowing Permits) Bill 2011 (the bill) was introduced into the Senate on 25 August 2011. Debate on the bill was subsequently adjourned.

1.2 On 15 September 2011, the Selection of Bills Committee referred the bill to the Rural Affairs and Transport Legislation Committee (the committee) for inquiry and report by 2 November 2011.¹

Conduct of the inquiry

1.3 Notice of the inquiry was posted on the committee's website and it was advertised in *The Australian* newspaper on 28 September 2011. The committee also wrote to key stakeholder groups inviting submissions.

1.4 The committee received 16 submissions (see Appendix 1). No hearings were held in relation to the inquiry.

1.5 The committee thanks submitters for their contribution to the inquiry. Submissions are available on the Parliament's website at www.aph.gov.au.

The bill

1.6 The bill would amend the *Quarantine Act 1908* (the Act) to provide that Biosecurity Policy Determinations made by the Director of Quarantine are disallowable legislative instruments. The bill would also provide that:

- a permit to import, introduce or bring in an animal, plant, substance or thing is a disallowable legislative instrument; and
- when these instruments are presented to Parliament, the Minister is required to table a risk analysis in both Houses and refer the instruments to parliamentary committees responsible for agricultural matters.²

Scrutiny of Bills Committee

1.7 The Senate Standing Committee for the Scrutiny of Bills has a brief to consider all bills as to whether they trespass unduly on personal rights and liberties and related matters. The Scrutiny of Bills Committee had no comment on the bill.³

1 Selection of Bills Committee, *Report No. 12 of 2011*, 15 September 2011, Appendix 3.

2 Explanatory Memorandum, *Quarantine Amendment (Disallowing Permits) Bill 2011*, p. 1.

Provisions of the bill⁴

1.8 Schedule 1 inserts new provisions into section 13 of the Act which would effectively make the Biosecurity Policy Determinations legislative instruments, and would provide that any import or removal permit issued (otherwise than in accordance with such a disallowable Biosecurity Policy Determination) are themselves disallowable by the Parliament.

1.9 Under section 13, the Governor-General is able to issue a Proclamation prohibiting the importation, introduction, bringing in of or removal, of a 'thing', ie an animal, plant (whether moveable or not); and any other article, substance or thing (including, but not limited to, any kind of moveable property).

1.10 Such a Proclamation can provide that the importation, introduction, bringing in of or removal of a 'thing' is prohibited unless the Director of Quarantine grants a permit to import, introduce, bring in or remove the 'thing'. Under the bill, such a permit would be a disallowable instrument, unless it is covered by a Director's determination, which is also a legislative instrument.

1.11 Under the bill, it is also proposed that:

- a Director's determination could specify a 'thing' and set out the conditions to be complied with to limit any quarantine risk associated with importing or removing the thing to an acceptably low level;
- the Director's determination would be laid before Parliament; and
- the Minister would table a risk analysis in both Houses of Parliament and cause a motion to be moved to refer it to the Committee responsible for agricultural matters in each House (these Committees would be required to table their report no more than 15 days after the determination is referred).

Current quarantine and biosecurity framework⁵

1.12 Australia's quarantine policy is based on the assessment and management of pest and disease risk to human, animal and plant health and the environment. The Australian Quarantine and Inspection Service (AQIS) manages the risk associated with imported products in various ways, based on the scientific advice provided by Biosecurity Australia. Biosecurity Australia is the unit within the Biosecurity Services

3 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest, No. 10 of 2011*, 14 September 2011, p. 13.

4 Information regarding the provisions of the bill has been taken from the Explanatory Memorandum, *Quarantine Amendment (Disallowing Permits) Bill 2011*, p. 1.

5 Based on information provided in Food and Beverage Importers' Association, *Submission 3* and Australian Food and Grocery Council, *Submission 8*.

Group, in the Department of Agriculture, Fisheries and Forestry (DAFF), responsible for recommendations regarding the development of Australia's biosecurity policy.

1.13 Biosecurity Australia undertakes science-based risk assessments and provides quarantine policy advice to protect Australia's animal and plant status and natural environment.

1.14 The current framework is set out in the *Quarantine Act 1908* and subordinate legislation, including the Quarantine Regulations 2000 and the Quarantine Proclamation 1998. The *Quarantine Act 1908* is administered on behalf of the Minister for Agriculture, Fisheries and Forestry by AQIS.

1.15 The Quarantine Proclamation identifies goods that may not be imported into Australia unless the Director of Animal and Plant Quarantine (or a delegate) grants an import permit, or unless the importers comply with other conditions specified in the proclamation. Section 70 of the Quarantine Proclamation 1998, section 34 of the Quarantine (Cocos Islands) Proclamation 2004 and section 34 of the Quarantine (Christmas Island) Proclamation 2004 specify things a Director of Animal and Plant Quarantine must take into account when deciding whether to grant a permit.⁶

1.16 In 2007, the Quarantine Regulations 2000 were amended to regulate the key steps of the import risk analysis process.⁷

Beale Review 2008

1.17 In 2008, Australia's quarantine and biosecurity framework was scrutinised by the Quarantine and Biosecurity Review Panel as part of the Beale Review. The Panel did make a number of recommendations in relation to government and parliamentary oversight of biosecurity. However, it did not recommend that quarantine decisions should become Disallowable Instruments.⁸

6 Department of Agriculture, Fisheries and Forestry, Biosecurity Australia, *Import Risk Analysis Handbook 2011*, p. 8.

7 The process to develop a new quarantine policy, where no policy exists, is called an import risk analysis (IRA).

8 Beale, Fairbrother, Inglis and Trebek, *One Biosecurity: A Working Partnership*, September 2007.

