

Chapter 2

Key Issues

2.1 A majority of the submissions received by the committee argued that the bill is not necessary, and that it would in fact weaken Australia's quarantine and biosecurity framework. It was argued that in practical terms, the bill is unworkable, specifically because it would cause significant and unnecessary delays (both to the issuing of permits and to trade) and would result in the disclosure of commercially confidential information.¹

2.2 Submitters also argued very strongly that the legislation is potentially contrary to Australia's World Trade Organisation (WTO) obligations.²

Australia's World Trade Organisation obligations

2.3 The committee received a number of submissions which expressed concern that under the new legislation, reviews of import permit applications would not be scientifically based. It was argued that, as a consequence, the adoption of the bill would be against Australia's obligations under the WTO Sanitary and Phytosanitary (SPS) Agreement.

2.4 Australia, as a member of the WTO, is obliged under the SPS Agreement to "consider all import requests from other countries concerning agricultural products."³ The WTO SPS Agreement states that:

Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent...it is based on scientific principles⁴

2.5 Under the WTO SPS Agreement, a member country has the right to adopt sanitary and phytosanitary measures necessary for the protection of human, animal and plant life or health. "As is set out in the WTO SPS Agreement, these measures

1 See, for example, South Australian Government, Department of Primary Industries and Resources, *Submission 2*, Food and Beverage Importers' Association, *Submission 3*, Phoenix Freight Systems, *Submission 5*, Shipping Australia Ltd, *Submission 6*, Australian Food and Grocery Council, *Submission 8*, Industry Working Group on Quarantine, *Submission 9*, Nursery and Garden Industry Australia, *Submission 11* and Unilever Australia, *Submission 14*.

2 See, for example, Quarantine and Inspection Resources Pty Ltd, *Submission 1*, South Australian Government, Department of Primary Industries and Resources, *Submission 2*, Food and Beverage Importers' Association, *Submission 3*, Phoenix Freight Systems, *Submission 5*, Australian Food and Grocery Council, *Submission 8*, Industry Working Group on Quarantine, *Submission 9*, Animal Health Alliance (Australia) Ltd, *Submission 10* and Unilever Australia, *Submission 14*.

3 Australian Food and Grocery Council, *Submission 8*, p. 4.

4 Department of Agriculture, Fisheries and Forestry, AusAID, Booklet *WTO SPS Agreement*, Article 2, p. 5.

must, however, be science-based, not more trade-restrictive than necessary and not arbitrarily or unjustifiably discriminatory against trading partners."⁵

2.6 The submission provided by the Food and Beverage Importers' Association (FBIA) raised specific concerns about this issue and argued that:

Any review by Parliament would not be seen as "scientifically based" but as "politically based" because the Parliament and its Committee system would not hold any specific scientific expertise over and above that contained in the Framework⁶ [*Quarantine Act 1908*, *Quarantine Regulations 2000* and the *Quarantine Proclamation 1998*].

2.7 The Australian Food and Grocery Council (AFGC) also argued that the bill's proposal to make the issuing of permits a Disallowable Instrument:

... overrides the sound scientific evidence and determination of Biosecurity Australia and the Director of Quarantine and also places Australia in jeopardy of compromising existing World Trade Organisation requirements.⁷

2.8 Further, the Industry Working Group on Quarantine (IWGQ) raised specific concerns regarding Australia's obligations under the WTO SPS Agreement and argued that:

An essential element of the WTO SPS Agreement to which Australia is a signatory provides Australia with the right to adopt sanitary and phytosanitary measures necessary for the protection of human, animal and plant life or health. ...the level of protection is determined...must be science-based, not more trade-restrictive than necessary and not arbitrarily or unjustifiably discriminatory against trading partners. Most issues are complex involving very detailed science assessments and risk estimation techniques. ... Whilst the IRA [import risk analysis] processes being carried out by Biosecurity Australia are established and strictly followed how does Parliament intent to scrutinise biosecurity assessments/decisions?⁸

2.9 The committee was also told that "Australia relies on global trade for both imported and exported products, and is party to the WTO. Australian agricultural exports benefit significantly by being party to the global trading systems and Australia has obligations to uphold the requirements for fair and reasonable access to markets"⁹ Submitters consistently argued that "Australia must maintain its adherence to WTO principles in order to fairly access export markets."¹⁰

5 Food and Beverage Importers' Association, *Submission 3*, p. 3.

6 Food and Beverage Importers' Association, *Submission 3*, p. 4.

7 Australian Food and Grocery Council, *Submission 8*, p. 3.

8 Industry Working Group on Quarantine, *Submission 9*, p. 2.

9 Australian Food and Grocery Council, *Submission 8*, p. 3.

10 Pet Food Industry Association of Australia, *Submission 12*, p. 1.

Delays in the issuing of permits

2.10 Submitters expressed concern that the provisions of the bill had the potential to create delays in the issuing of permits. The FBIA's submission explained that:

The number of permits issued annually is extensive (up to 20,000), but, as we understand, most are not issued strictly in accordance with an IRA or policy determination based on an import risk analysis. On our reading of the Bill, permits not based on such a determination would become "disallowable instruments" and have to be tabled. Most permits would therefore have to be tabled.¹¹

2.11 The FBIA went on to argue that any delay

...would be exacerbated by the fact that permits are issued every working day, but Parliament has limited sitting days during the year.¹²

2.12 The IWGQ also pointed to the large number of permits issued in the 2010/11 financial year and noted that there would be 20,300 import permit applications that would become "disallowable instruments" under the Bill. IWGQ argued that:

These referrals would cause a significant work load for AQIS and the Parliament in presenting and dealing with the applications and, no doubt result in significant delays and costs for all permits that require referral.¹³

2.13 The Pet Food Industry Association of Australia Inc. (PFIAA) and Animal Health Alliance (Australia) Ltd (AHAAL) noted that the approval system for import permit applications is already both arduous and time consuming.¹⁴ AHAAL told the committee that the new arrangements proposed by the bill would "only serve to lengthen the already unacceptable timeline for the issuance of import permits".¹⁵

Australia's international credibility

2.14 Several submitters raised concerns about the possible negative impact the bill may have on Australia's international credibility and the country's reputation amongst its trading partners.

2.15 AHAAL noted that, historically, Australia has had a reputation internationally of being a difficult country to import into due to its 'strict' quarantine requirements.

11 Food and Beverage Importers' Association, *Submission 3*, p. 4.

12 Food and Beverage Importers' Association, *Submission 3*, p. 4.

13 Industry Working Group on Quarantine, *Submission 9*, p. 3.

14 Animal Health Alliance (Australia) Ltd, *Submission 10*, p. 2 and Pet Food Industry Association of Australia, *Submission 12*, p. 2.

15 Animal Health Alliance (Australia) Ltd, *Submission 10*, p. 2.

They argued that "including a political step in the quarantine assessment process would further erode our international credibility."¹⁶

2.16 AHAAL also noted that:

Political interference in the current AQIS import approvals process (as suggested by the Bill) would almost certainly result in international retaliation from our major trading partners and detract from Australia's ability to negotiate free trade agreements.¹⁷

2.17 Quarantine and Inspection Resources Pty Ltd (QIR) also raised concerns about the impact on Australia's reputation, and noted that in seeking access to new markets for agricultural goods, Australia is required to provide both pest and disease information in support of any application. QIR suggested that Australia expects its trading partners to evaluate submissions on scientific grounds and argued that:

The ability of Australia to gain access, and perhaps even more importantly maintain access, in the face of a problem depends to a high degree on the credibility of the Department of Agriculture, Fisheries and Forestry (DAFF) scientific staff involved in market access arrangements. This Bill will undermine the credibility of Australia's market access efforts.¹⁸

Industry confidence in AQIS

2.18 Several submitters also suggested that the bill could have a negative impact on the reputation of AQIS and possibly undermine confidence in the organisation's ability to perform its current role in relation to quarantine and biosecurity. Shipping Australia Ltd argued that:

... [the] Bill clearly indicates that Parliament does not have any confidence that the AQIS can carry on its role in terms of granting import permits and would deliver a clear signal to industry that they should also question their confidence in the ability of AQIS to carry out the tasks set under legislation approved by Parliament.¹⁹

2.19 QIR also argued that it is important that the "value of Australian scientists who contribute to our market access efforts should not be underestimated, as it is very substantial".²⁰

Commercial confidentiality

2.20 An additional concern raised in relation to the bill was that the new arrangements for import permit applications could result in confidential information

16 Animal Health Alliance (Australia) Ltd, *Submission 10*, pp 1-2.

17 Animal Health Alliance (Australia) Ltd, *Submission 10*, p. 1.

18 Quarantine and Inspection Resources Pty Ltd, *Submission 1*, p. 1.

19 Shipping Australia Ltd, *Submission 6*, p. 2.

20 Quarantine and Inspection Resources Pty Ltd, *Submission 1*, p. 1.

being made public. A number of submitters noted that commercially confidential information could be disclosed through publically releasing the names of permit holders and the commodities for which they are applying for permits.²¹ FBIA expressed the view that:

The name of a permit holder and the commodity permitted to be imported under a permit are currently, and we believe rightly, treated as confidential on commercial grounds. The DAFF does not disclose this information. There seems no reason for the names of permit holders or the commodities permitted to be imported to publicly realised, as who the importer is does not relate to any measure of biosecurity risk.²²

2.21 IWGQ expressed a similar view, and noted that the name of a permit holder, supplier or manufacturer (and any details in relation to the commodity) is currently treated as confidential on commercial grounds.²³ IWGQ further argued that AQIS currently does not disclose indentifying information, and that:

... on [the] occasions AQIS will obtain information from overseas suppliers which is not subject to disclosure to permit applicants to maintain confidentiality and thus protect IP and patent rights of suppliers. Another complication would be that only the names of the applicants or holders of the permit tabled in parliament that would be disclosed. ... There appears to be no valid reason for the names of permit applicants or holders and the commodities to be imported to be publicly released.²⁴

Impact on business

2.22 Several submitters argued that a consequence of the bill would be to impose an additional regulatory cost on businesses.

2.23 AHAAL, for example, explained that:

Some biological permits have taken years to obtain and the data provided for these permits is exhaustive. Lack of science behind any decision to remove the approval may cost the country's producers significantly if products are no longer available, especially in some of the niche biological areas.²⁵

2.24 Submitters also pointed to the bill's potential to cause uncertainty for businesses, as AFGC explained:

The Bill introduces further costly administrative processes and delays and compromises the legitimate importation of products into Australia that have been approved by Biosecurity Australia's risk assessment process. This adds

21 Unilever Australasia, *Submission 14*, p. 2.

22 Food and Beverage Importers' Association, *Submission 3*, p. 5.

23 Industry Working Group on Quarantine, *Submission 9*, p. 3.

24 Industry Working Group on Quarantine, *Submission 9*, p. 3.

25 Animal Health Alliance (Australia) Ltd, *Submission 10*, p. 2.

to the further uncertainty and business risks faced by food manufactures, and further increases the complexity of running businesses in Australia.²⁶

2.25 AFGC also argued that:

[The Bill will bring] disarray to the current time consuming and business costly process of navigating the Australian import/export requirements for food. The Bill introduces a significant level of uncertainty for business unnecessarily. If the provisions and arrangements provided by Biosecurity Australia are able to be made disallowable instruments by Parliament the risk for business is exacerbated in what is an extremely competitive global market place.²⁷

2.26 AHAAL also noted that the new arrangements create a level of uncertainty for businesses when renewing their import permits. The submission stated that:

Since the Bill also captures import permit renewals ... it could mean that a company's ability to conduct business in Australia could unreasonably be stopped completely and without warning.²⁸

Committee view

2.27 The committee acknowledges the concerns raised by submitters regarding the amendments to the *Quarantine Act 1908* proposed by the bill.

2.28 The committee notes the concerns raised by a significant majority of submitters who argued that, in addition to the bill being unnecessary, it has the potential to weaken Australia's quarantine and biosecurity framework.

2.29 The committee also notes the evidence which suggests that, in practice, the arrangements proposed by the bill would cause significant and unnecessary delays (both to the issuing of permits and to trade). It is also noted that a possible consequence of the bill would be the unwanted disclosure of commercially confidential information.

2.30 The committee acknowledges the evidence provided by a number of organisations which argued strongly against the proposed new legislation on the basis that it could be interpreted as contrary to Australia's (WTO) obligations.

2.31 The committee is particularly mindful of Australia's WTO obligations and is committed to Australia's responsibilities under the WTO SPS which requires that all import requests from other countries – particularly in relation to agricultural products – are considered using scientific-based principles.

26 Animal Health Alliance (Australia) Ltd, *Submission 10*, p. 5.

27 Australian Food and Grocery Council, *Submission 8*, p. 5.

28 Animal Health Alliance (Australia) Ltd, *Submission 10*, p. 2.

2.32 The committee shares submitters' concerns that the bill has the potential to enable the Parliament to override scientific evidence and determinations provided by Biosecurity Australia and the Director of Quarantine.

2.33 The committee shares the view of those who argued that Australian agricultural exports benefit from being party to the WTO global trading system. The committee notes the possible negative impact the bill could have on Australia's international credibility and its reputation amongst its trading partners. The committee notes that if there is any perception of political interference in the import approvals process, Australia runs the risk of almost certain retaliation from our major trading partners.

2.34 The committee is keen to ensure that Australia not only meets its obligations under the WTO, but continues to make trade decisions based on scientific evidence provided by the appropriate Government agencies.

Recommendation

2.35 The Committee recommends that the bill not be passed.

Senator Glenn Sterle

Chair

