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To whom it may concern

**INQUIRY INTO BIOSECURITY AND QUARANTINE ARRANGEMENTS**

Please find attached the Department of Primary Industries, Parks, Water and Environment submission to the Senate Standing Committee on Rural and Regional Affairs and Transport Inquiry into Biosecurity and Quarantine Arrangements.

Yours sincerely

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Kim Evans  
**SECRETARY**

**Submission to**

# Senate Standing Committee on Rural and Regional Affairs and Transport

## Inquiry into biosecurity and quarantine arrangements

Department of Primary Industries, Parks, Water & Environment Tasmania

August 2010

The Department of Primary Industries, Parks, Water and Environment, Tasmania (DPIPWE) appreciates the opportunity to comment on Australia's biosecurity and quarantine arrangements, noting the Terms of Reference (TORs) for the inquiry are:

- (a) The adequacy of current biosecurity and quarantine arrangements, including resourcing;
- (b) Projected demand and resourcing requirements;
- (c) Progress toward achievement of reform of Australian Quarantine and Inspection Service export fees and charges;
- (d) Progress in implementation of the 'Beale Review' recommendations and their place in meeting projected biosecurity demand and resourcing; and
- (e) Any related matters.

This submission addresses TORs (a) and (d) only, as follows:

- (a) **The adequacy of current biosecurity and quarantine arrangements, including resourcing**

One of the DPIPWE's primary concerns about current biosecurity arrangements is the policy void that is Australia's Appropriate Level of Protection (ALOP). ALOP is defined as *providing a high level of sanitary and phytosanitary protection, aimed at reducing risk to a very low level, but not to zero.*

The ALOP statement is ambiguous and open to interpretation. These inadequacies are evidenced in the confusion about ALOP and how it is determined, reported by the Beale Review. The Review provided a chance to clarify and strengthen the ALOP statement as the central tenet around which all other biosecurity policy is set. Since the ALOP statement is fundamentally about the level of biosecurity risk Australia is prepared to accept, these policy links have direct implications for how public resources are deployed to achieve satisfactory 'risk return' in all areas of biosecurity.

We have argued these matters, either as advocated by or consistent with Beale, at the officials level several times. However, there appears to be little appetite for departure from the *status quo*. Nevertheless, we provide our thoughts again, as follows.

To fulfil its function as the core of national biosecurity policy, Australia's ALOP statement must be expressed in a way that is:

- consistent with relevant international frameworks so that import policy decisions made against it are above challenge; and
- comprehensible to people who bear the costs or enjoy the benefits of decisions, in particular the Australian community, therefore delivering policy transparency and accountability.

We are aware of the argument that the current spare ALOP statement may provide less fertile grounds for challenge in international fora than a more fulsome one, but are not inclined to accept it. Any loss of 'flexibility' inherent in adopting a more meaningful ALOP statement is compensated by the increased security of import decision-making. That increased security arises because the ALOP statement stands above challenge in the scheme of international trade rules administered by the World Trade Organisation.

The task then becomes one of demonstrating that Australia decides in accordance with the principles set out in the ALOP statement and in compliance with the *Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement). This would seem more efficient than having to defend the merit of the principles themselves each time a decision on imports is taken, which is the current situation. A revised ALOP statement would only be inconvenient if Australia was inconsistent or capricious in biosecurity decision-making, a circumstance that should not arise.

We also doubt the argument that these principles need not be identified in Australia's ALOP statement because the SPS Agreement already provides for them. While the SPS Agreement does address these matters, its provisions merely set out (often unsatisfactorily) what nations may do, must do and must not do. There are compelling transparency arguments for suggesting Australia needs to be explicit about what it *will* do within that general scheme of rights, obligations and constraints.

Accordingly, the DPIPWE proposes the following as an alternative ALOP statement capable of conferring increased security upon biosecurity decision-making and rectifying the transparency issues identified by Beale:

*“Australia's Appropriate Level of Protection (ALOP) is the standard of biosecurity the Australian Government applies when regulating pest and disease risks associated with international trade and travel.*

*Australia's ALOP provides a high level of sanitary and phytosanitary protection, aimed at reducing risk to a very low level. This reflects the community's aspirations for healthy environments, healthy people and a thriving economy while maintaining our nation's connectedness with the rest of world.*

*ALOP therefore recognises that pest risks that come with travel and trade may be minimised but that it is rarely possible to reduce these to zero without forgoing the benefits of these activities. However, if serious pest risks cannot be effectively mitigated, the Australian Government will exercise its right to prohibit an import or other inbound movement so that ALOP is met.*

*Decisions about import risk are made using a structured assessment process that uses a risk estimation matrix<sup>1</sup>. The matrix combines estimates of likelihood of pest entry, establishment and spread, and the overall consequences were that to happen.*

*The likelihood of pest entry, establishment and spread is estimated in consistent qualitative terms<sup>2</sup> over the anticipated duration and volume of trade or other inbound movement.*

*The potential magnitude of consequences is estimated by assessing impacts on communities, environments and economies at local, district, regional and national scales.*

*Sanitary and phytosanitary measures designed to satisfy Australia's ALOP apply to all Australian territory unless a region(s) is likely to be subject to significantly different risk compared with the remainder of the country. That region(s) may be subject to different sanitary and phytosanitary measures if these can be effectively implemented.*

*The Australian Government takes a prudent approach to uncertainty in the nature of biosecurity risk, particularly, if potential consequences of pest establishment and spread are likely to be severe or irreversible.”*

Such an ALOP statement in turn suggests that explicit but comprehensible guidance is required on the conduct of import risk analysis. The Beale Review went so far as to propose such guidance be included in new national biosecurity legislation.

We have drafted principles and technical steps that could be used as the basis for the legislated guidance Beale appeared to envisage. The principles and technical steps largely reflect current practice but also provide a strengthened framework for evaluating regional difference, and highlight the importance of dealing transparently with scientific uncertainty, and of considering volume and period of trade factors in a meaningful way. The principles and technical steps are presented below.

## **1. Principles for Conduct of Biosecurity Import Risk Analysis:**

*Australian Government import risk analysts and decision-makers must:*

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<sup>1</sup> Here we refer to the risk estimation matrix currently used by Biosecurity Australia in its Import Risk Analyses

<sup>2</sup> Here we refer to the qualitative scheme for estimating likelihood currently used by Biosecurity Australia

*Consider all import risk estimates against Australia's ALOP;*

- b) Aim for a high level of technical consistency across risk estimates and policy determinations for different import risk questions;*
- c) Notwithstanding 1b), select the methodological approach that is most appropriate to the risk question and the available data;*
- d) Assess empirical evidence and other information for veracity and give it weight in the analysis commensurate with quality and relevance to the import risk question;*
- e) Have regard to and clearly identify relevant limits of knowledge and other sources of uncertainty, particularly when there is a prospect of serious or irreversible harm;*
- f) Clearly identify assumptions made in an import risk analysis;*
- g) Have regard to and clearly identify the range of plausible alternate views on risk, rather than confining the analysis to a mainstream view;*
- h) Have regard to and clearly identify regional differences in biosecurity risk across Australia;*
- i) Conduct import risk analysis on a case-by-case basis but consider potential for cumulative risk where two or more separate importation activities carry similar pest risks;*
- j) Foster an adaptive and responsive biosecurity system by providing for sufficient monitoring of risk analysis effectiveness and currency;*
- k) Take into account the standards, guidelines and recommendations developed by relevant organisations, including the World Organisation for Animal Health, the Secretariat of the International Plant Protection Convention and the Codex Alimentarius Commission;*
- l) Communicate and document the import risk process thoroughly and unambiguously so that any person with a basic understanding of the import risk question could be expected to follow how the analysis was accomplished;*
- m) Provide domestic and international stakeholders with genuine opportunity to participate in the import risk analysis process and to clarify their views about any particular import risk question; and*
- n) Ensure that relevant treaty obligations are met and that Australia's rights in regard to those treaties are exercised.*

## **2. Technical Steps for Import Risk Analysis**

*Australian Government import risk analysts must in the preparation of an Import Risk Analysis report or other import policy advice:*

- a) Identify the rationale for the import risk analysis, including, the type of import activity or other inbound movement that is being proposed, reviewed or otherwise anticipated, essential characteristics and why it may potentially pose unacceptable biosecurity risk;*

- b) *Identify the scope of the analysis in terms of nature of the proposed import, or inbound movement, its origin(s) and as relevant, intended use in Australia. Exclusions from scope must be specified when there may be doubt;*
- c) *Describe the method used to conduct the import risk analysis. If the analysis is a review of existing import activity or other inbound movement, the method description must identify whether any existing risk mitigation measures are included or excluded in the estimation of risk;*
- d) *Identify the timeframe over which the import risk analysis can be reasonably expected to remain reliable by anticipating duration and/or volume of trade or inbound movement;*
- e) *Conduct a first tier screen for organisms potentially associated with the import activity to distinguish those that may pose a potential pest risk and which otherwise qualify for further assessment, from those that do not;*
- f) *Where 2e) indicates potential pest risk, assemble pest-specific profiles to inform a second tier pest risk assessment that:*
  - i. *Identifies the potential risk scenario(s). That is, the pathways and sequence(s) of events that could result in harm to the environment, people or the economy; and*
  - ii. *Estimates, with regard to the risk scenario(s), the likelihood of pest entry, establishment and spread; and*
  - iii. *Estimates, with regard to the risk scenario(s), the type and magnitude of biological and economic consequences that could occur were entry, establishment and spread to occur;*
  - iv. *Has regard in the estimate of economic consequences, to net costs; and*
  - v. *Combines 2f)ii and 2f)iii to estimate the potential level of risk of the proposed import, using the risk estimation matrix<sup>3</sup>;*
- g) *Where 2e) does not indicate potential pest risk because there was inadequate information, assess whether import prohibition is appropriate or whether a general quarantine regime would meet ALOP, given the uncertainties;*
- h) *Where 2e) does not indicate potential pest risk and there are no outstanding uncertainties, conclude the pest risk assessment;*
- i) *Where 2f) results in a risk estimate at or below Australia's ALOP, conclude the import risk analysis with a recommendation to permit import not subject to pest-specific conditions and:*
  - i. *Clarify that this does not exclude the application of general quarantine measures;*
  - ii. *Specify, with regard to the timeframe of the risk analysis, potential circumstances that would cause the estimate of acceptable risk and hence the recommendation, to change;*
  - iii. *Identify, with regard to the timeframe of the risk analysis, the monitoring measures that would need to be implemented to detect those changed circumstances;*
- j) *Where 2f) results in a risk estimate that exceeds Australia's ALOP, identify and evaluate*

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<sup>3</sup> Same risk estimation matrix currently used by Biosecurity Australia

*risk mitigation measures that could singly or in combination reduce risk to 'very low' by reducing the likelihood of pest entry, including release in the vicinity of a suitable Australian host or environment.*

- i. Identify, with regard to the import risk scenario(s), the extent to which each potential risk mitigation measure could be expected to alter the likelihood of entry;*
  - ii. Where several potential phytosanitary measures of equivalent effectiveness exist which could all reduce risk to ALOP, compare these and recommend the most cost-effective measure or set of measures;*
  - iii. Specify, in regard to identified measure(s) and with regard to the timeframe of the risk analysis, potential circumstances that would cause the estimate of unacceptable risk and hence recommendations for risk mitigation, to change;*
  - iv. Identify, with regard to the timeframe of the risk analysis, the monitoring measures that would need to be implemented to detect the changed circumstances anticipated in 2j)iii;*
  - v. Where no potential measures are identified which could alter the likelihood of entry sufficient to reduce risk to ALOP, recommend import prohibition;*
  - vi. Specify, with regard to the timeframe of the risk analysis, potential circumstances that would cause the recommendation to prohibit import, to change;*
  - vii. Identify, with regard to the timeframe of the risk analysis, the monitoring measures that would need to be implemented to detect the changed circumstances anticipated in 2j)vi;*
- k) In estimating risk and in recommending appropriate measures, have regard to regional difference within Australia by assessing:*
- i. Regional difference in pest status;*
  - ii. Regional difference in potential for pest establishment (including but not limited to climatic suitability, host or vector presence and distribution);*
  - iii. Regional difference in the magnitude of potential consequences;*
  - iv. If 2k)i, 2k)ii and 2k)iii suggest higher risk for a region, whether cost-effective risk mitigation measures are available that can be practically implemented;*
- l) Where 2k) suggests a higher level of risk for a region than the rest of the country, and cost-effective risk mitigation commensurate with that higher risk can be practically implemented, recommend those stricter measures for that region and:*
- i. Specify, with regard to the timeframe of the risk analysis, potential circumstances that would cause the factors assessed in 2k) and hence the recommendation for stricter regional measures, to change;*
  - ii. Identify, with regard to the timeframe of the risk analysis, the monitoring measures that would need to be implemented to detect those changed circumstances.*

Rendition of principles and technical steps for import risk analysis in point form may be suitable for legislative purposes. However, the technical steps in particular require further explanation to assist consistent application by analysts, and to provide transparency for stakeholders, around the import risk analysis process.

Conceivably, the existing Biosecurity Australia method document “*Guidelines for Import Risk Analysis Draft September 2001*” could be updated to reflect and expand upon the technical steps listed above. If that were to occur, we would suggest modifications to current Biosecurity Australia practice regarding consideration of volume and period of trade factors (as per 2d) and regional difference in risk (as per 2k).

**Volume and period of trade** Biosecurity Australia currently assumes a standard one year volume of trade when estimating the likelihood of pest entry to accommodate seasonal variations in pest presence, incidence and behaviour. BA also takes the view that this does not mean any quarantine measure recommended for that organism is only good for one year because the risk estimation matrix implicitly reflects consideration of establishment, spread and consequence over more than one year. Despite this assurance from BA, we have not yet seen any evidence or explanation of a systematic process for converting this annual likelihood estimate and long run consequence estimate into a long run risk estimate.

The current approach leads to risk being estimated for an indeterminate, unspecified period which gives rise to ambiguity about the meaning of the risk estimate. It raises doubt about whether an estimate of ‘very low risk’ equates to community expectations of what constitutes a very low and hence acceptable risk.

**Regional difference** The current practice for considering regional difference in risk is based on pest status and establishment potential. We suggest at least two additional criteria could be assessed to provide a truer indication of regional difference, giving the following four part scheme:

1. **Differences in pest status**

Assess:

- General surveillance or specific survey data;
- Eradication or control programs for the pest in question.

2. **Differences in potential for establishment**

Assess with reference to relevant international standards. For example, International Standard for Phytosanitary Measures No. 11 clause 2.2.2 lists criteria appropriate to estimating potential for plant pest establishment.

3. **Differences in the magnitude of potential consequences**

Assess:

- Whether there is an identifiable and discrete regional economy, including size of domestic markets, diversity of domestic output, range of export markets,

- openness to trade;
- In that regional economy, the characteristics and value of potentially affected natural environments, primary production systems and communities;
- Existence of a regional Brand or identity for which pest and disease status has direct or plausible significance (eg. it affects the value buyers, visitors or residents attribute to products, experiences or lifestyles available from or in the region);
- Whether, given the above it is plausible that the region could experience greater relative impact, compared with the rest of the country.

**4. Feasibility of practically implementing measures where other criteria indicate higher risk**

Assess:

- presence of geographical barriers and likely effectiveness of these in excluding the spread of the pest (ie. some pests may enter regardless of sanitary or phytosanitary measures);
- geographical remoteness from other regions, including in terms of transport network coverage as well as distance *per se*;
- existing biosecurity capability and infrastructure at the barrier, including inspection, quarantine and treatment capability and infrastructure, compared with anticipated volume of trade or inbound movement.

Another aspect of current practice that may lead to inadequate recognition of regional difference in an import risk analysis is the way consequences are evaluated across geographic scales. The current BA method involves estimating impact at local, district, regional and national levels using decision rules that yield a letter score reflecting the potential magnitude of the impact (Table 1). The combination of letter scores for all impacts at each scale determines an overall consequence rating.

The decision rules for geographic scale are structured such that impacts assessed as significant for smaller areas are assigned decreasing importance at larger scales. Potentially significant impacts over larger areas will be increasingly significant at scales below. This is a logical way of considering the spatial dimension of impact.

Table 1 Decision rules used by Biosecurity Australia for determining the impact score based on the magnitude of consequences at four geographic scales

Impact score	<b>G</b>	Major significance	Major significance	Major significance	Major significance
	<b>F</b>	Major significance	Major significance	Major significance	Significant
	<b>E</b>	Major significance	Major significance	Significant	Minor significance
	<b>D</b>	Major significance	Significant	Minor significance	Indiscernible
	<b>C</b>	Significant	Minor significance	Indiscernible	Indiscernible
	<b>B</b>	Minor significance	Indiscernible	Indiscernible	Indiscernible
	<b>A</b>	Indiscernible	Indiscernible	Indiscernible	Indiscernible
		<b>Local</b>	<b>District</b>	<b>Regional</b>	<b>National</b>

However, the current scale rules result in impact estimates for smaller areas being subsumed into the estimate for the largest (ie. national) geographic scale. Generally, this is appropriate, because it would be impractical to undertake and difficult to justify individual pest risk assessments at multiple scales.

However, there are circumstances in which serious impacts at sub-national levels deserve separate treatment. We suggest that where the four criteria for assessing regional difference, as proposed above, are met, separate treatment is justified.

There are two advantages of this approach. A separate regional assessment based on demonstration of regional difference, allows the application of SPS measures commensurate with risk posed to the region by avoiding the downplaying effect inherent in Table 1. Furthermore, removing a potentially significantly affected region from the national risk estimate means the national estimate may be moderated and that SPS measures that are less trade restrictive than those appropriate for the region, may be considered for the rest of the country.

**(d) Progress in implementation of the 'Beale Review' recommendations and their place in meeting projected biosecurity demand and resourcing**

The DPIPWEE believes that the above arguments with respect to defining Australia's ALOP, describing our risk assessment approach and effectively dealing with volume and duration of trade, and regional differences in risk are entirely consistent with the thrust of the recommendations from the Beale Review about clarifying ALOP and risk assessment. Despite several representations to the Commonwealth at officials and at Ministerial levels, there does not appear to be any intention to depart from the *status quo* and address these issues as proposed.

The Beale Review also made several recommendations for cost recovery, levies, compliance agreements and other mechanisms for achieving greater equity and efficiency benefits in biosecurity service delivery. There has been modest progress towards implementation of some of these recommendations but much remains to be done.

Cost effective allocation of biosecurity resources involves targeting resources to those areas where the greatest reduction in risk is achieved for the smallest expenditure. There is general agreement amongst Governments that those efficiencies cannot be achieved unless there is further progress to ensuring that both risk creators and beneficiaries make equitable contributions through cost recovery. Such contributions would reduce the extent to which allocations of biosecurity resources to private goods currently distort the most cost effective allocation of resources.

One area of implementation of the Beale Review recommendations is not so universally accepted amongst Governments. Tasmania has made it clear that it does not support the use of Commonwealth law to prevail over State quarantine laws whenever the Commonwealth concludes that those State laws are unwarranted.

Tasmania believes that any decisions made by the Commonwealth about State quarantine laws could reasonably be expected to be directed towards the national interest rather than Tasmania's interest. There are several scenarios whereby the national interest and Tasmania's interest do not coincide. The apparent reluctance of the Commonwealth to deal adequately with regional difference in biosecurity risk analysis means that Tasmania must continue to oppose the implementation of this recommendation.