



21 January 2015

Mr Tim Watling
Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

BY EMAIL: rrat.sen@aph.gov.au

Dear Mr Watling

RE: BIOSECURITY BILL 2014

National Farmers' Federation (NFF) is the peak body representing farmers and the broader agriculture sector across Australia and is one of Australia's foremost and respected advocacy organisations.

Australian farmers and the agribusiness sector underpin Australia's food security and contribute to global food and fibre security, directly through production and indirectly through transfer of knowledge and skills to other nations. The continued profitability of farm businesses underpins the ability of the sector to expand and take advantage of the opportunities of a growing global population with an ever-increasing demand for high-quality, safe food.

Fundamental to this sector's ongoing capacity to produce high quality, safe food and fibre products is a strong and reliable biosecurity system that aids in maintaining Australia's relative freedom from pests and diseases common to many other parts of the world.

NFF therefore welcomes the updating of the *Quarantine Act 1908* and associated legislation and regulations into a more robust, flexible and modern 'package' designed to service Government and industry needs well into the future.

NFF acknowledges the extensive process the Department of Agriculture (previously the Department of Agriculture, Fisheries and Forestry (DAFF)) has undertaken in putting together the *Biosecurity Bill 2014*. NFF also appreciates being involved through its representation on the Industry Legislation Working Group established by DAFF for use as a sounding board during the early parts of the drafting process.

Please find attached NFF's submission to the Senate Committee's Inquiry into the *Biosecurity Bill 2014*.

Yours sincerely

SIMON TALBOT
Chief Executive Officer

**NATIONAL FARMERS' FEDERATION SUBMISSION TO THE SENATE'S RURAL AND REGIONAL
AFFAIRS AND TRANSPORT COMMITTEE**

INQUIRY IN THE BIOSECURITY BILL 2014 AND RELATED BILLS

16 JANUARY 2015

In response to the release of the Exposure Draft of the Biosecurity Bill in 2012, National Farmers' Federation (NFF) provided a written submission to the Department of Agriculture, Fisheries and Forestry (DAFF) (dated 5 November 2012) and was represented at a number of DAFF-hosted workshops around the country to test various hypothetical scenarios that might trigger action under the forthcoming Act. NFF members have also contributed in 2014 to the review of the Import Risk Analysis (IRA) process, which is referenced in the Bill.

Within its submission of 2012, NFF discussed the following issues: the IRA process, the Inspector General and the Eminent Scientists Group; inclusion in the Bill of Australia's Appropriate Level of Protection (ALOP); the proposed 'onus of proof' provisions; details around 'Approved Arrangements'; commitment to resourcing; and, cost recovery and its relationship with the care of animals.

For ease, these issues are repeated below, with a comment on whether NFF's believes its concerns have been addressed. Following this is a list of a few additional points submitted by NFF's member bodies.

Biosecurity Import Risk Analyses, Inspector General and Eminent Scientists Group

Excerpt from previous submission

NFF interprets the role of the Inspector General of Biosecurity (IGB) to be one of intervening when called upon to check on the veracity and accuracy of the process followed in the conduct of a BIRA and to "...review the performance of functions and the exercise of powers by the Director of Biosecurity..."; undertaking a similar check of the science behind the BIRAs is, it seems, to be outside the responsibilities bestowed on the IGB.

While this delineation of the IGB's powers between process and science may be appropriate, NFF is concerned at the potential weakening of independent scientific review of decisions, particularly with the loss of the Eminent Scientists Group that, under the existing arrangements, is appointed by the Minister for the express purpose of providing to Biosecurity Australia high-level scientific and economic scrutiny of decisions emanating from significant and expanded Import Risk Analyses.

The IGB, being a Ministerial appointee, has a level of independence similar to the ESG; however, the IGB's powers seem far less reaching when it comes to providing independent assessments of the scientific and economic rigour of decisions and appeals.

In this context, NFF requests:

- *advice that this is a misinterpretation of the new legislation; or*
- *clarification on how the loss of the ESG has been countered; or*
- *an indication of how this potential shortcoming may be corrected when finalising the legislation.*

NFF's current position

NFF notes the following proposed text in the draft BIRA-related regulation:

"If the Director believes that it is essential to undertake research, or to seek substantial expert advice, to complete a BIRA, the Director may commission the research or advice" [subsection 11(2) of the BIRA-related Regulation Exposure Draft].

This *may* prove satisfactory in allowing for research input; however, there remains a lack of independent scientific oversight that, while possibly finding agreement with the Director's final decision, will assist in placating any accusations levelled at the Director for the decision.

NFF requests the Senate Committee to satisfy itself that independent scientific oversight, similar to that currently provided by the Eminent Scientists Group, is unnecessary.

ALOP's Inclusion and the Risk-Based Approach

Excerpt from previous submission

The inclusion in the draft legislation of reference to Australia's Appropriate Level of Protection (ALOP) should be considered cautiously. While NFF's policy clearly supports the internationally accepted norm of 'minimum risk' as against 'zero risk' and recognises the importance of individual countries' sovereignty in determining their own ALOP, it seems a large step to have the concept embedded in long-lasting legislation. Such trade-related concepts and nomenclature, which rely heavily on international agreements, have a tendency to be changed unexpectedly over time as part of the unpredictable evolution of policy.

NFF's current position

NFF notes the inclusion of text covering the 'ALOP for Australia' in Section 5 of the *Biosecurity Bill 2014*. This text appears non-contentious; NFF is comfortable with its inclusion.

Onus of Proof

Excerpt from previous submission

NFF strongly supports the change of 'onus of proof' whereby, in the case of suspected illegal imports, the importer will now be required to prove the shipments were legal rather than the Government having to prove they were illegal.

NFF's current position

NFF remains strongly supportive of this change from the old legislation.

Approved Arrangements

Excerpt from previous submission

'Approved Arrangements' will replace current agreements involving Quarantine Approved Premises and Compliance Agreements.

With the change from a physical concept (i.e., "premises") to agreements ("arrangements") being the basis of import rules, confusion within industry is evident. While DAFF has, via the various consultative fora, attempted to explain the new, more flexible approach, a number of questions remain about how this concept will translate into a more robust system than exists now. It is acknowledged that much of the detail surrounding the application of this concept will be contained in yet-to-be-released regulations and associated documents. As this is a vital part of Australian agriculture's future protection against exotic disease and pest incursion, NFF requests involvement in the final approval process for these ancillary documents.

...NFF requests an assurance from Government that, in circumstances where the product being imported presents a potential risk of introducing a pest or disease of major significance to Australia's agricultural industries, maximum rigour be applied to the initial and ongoing approval process. It is conceivable that, without this, familiarity could breed carelessness; no amount of recompense (through the confiscation of a bond and/or other punitive action) could undo any dire consequences from such carelessness.

NFF's current position

This is a critical area for the farming and agribusiness sectors in that it represents the point of highest exposure to risk of incursions.

It is acknowledged that the detail surrounding the application of the legislation will be contained in the relevant regulations and other supporting documentation; NFF therefore continues to seek assurances that industry will be closely involved in the drafting of these documents.

Commitment to Resourcing

Excerpt from previous submission

With the apparent decline in jurisdictional resources traditionally used to assist industry in the field of disease surveillance and control, NFF requests the Federal Government maintain as one of its highest priorities the adequate resourcing of its responsibilities under the new legislation. NFF sees an important part of this commitment being the retention and ongoing training of biosecurity officers required for the Government to fulfil its expanded obligations.

NFF's current position

The Bill provides for the Federal Government to impose intra- or inter-jurisdictional zoning and controls as a response to major disease and/or pest incursions. Industry has observed the slow but steady decline in governments' biosecurity related resources at the federal and jurisdictional levels. While this seems to have been arrested in the last few years (in some jurisdictions at least), it is incumbent on the Federal Government to:

- encourage all jurisdictions to maintain adequate resourcing for biosecurity purposes;
- bolster its own resource capability to handle the additional workload likely to be required of it in an emergency; and
- assist industry sectors where relevant to position themselves with adequate resources to assist in emergency responses.

NFF requests the Senate Committee to seek clarity on how the Federal Government intends resourcing its responsibilities under the new legislation and under what agreements the Federal and jurisdictional governments will ensure co-operation in pooling their resources to maximum effect.

Cost Recovery

Excerpt from previous submission

The draft cost-recovery provisions apply in the main to importers and agents. Provisions to allow for the recovery of moneys through the sale of withheld goods (in the case of unpaid fees) is noted and supported.

NFF's current position

NFF maintains its support for this provision.

ADDITIONAL POINTS

Within the following table is a summary of comments submitted by NFF Member Bodies. The superscripted numbers in parentheses are references to the relevant clauses in the Bill.

Chapter/Clause	Item	Recommendation
Chapter 1 – Clause 25 and Definitions “pest” (p52) “disease agent” (p16) and “invasive pest” (p20)	Act applied to “ <i>pests</i> ” (species/ strain/biotype of plant or animal, or disease agent) that can cause direct or indirect harm to humans, animal or plant health or environment. A “ <i>disease agent</i> ” includes, but not limited to, microorganism, infectious agent and parasite that causes illness or infection. An “ <i>invasive pest</i> ” is alien and does not infect or cause a disease or act as a vector for a disease.	Broaden the definition of pest, disease agent and invasive pest to also include any genetically modified organism to protect Australia against any futuristic biological warfare and/or scientific genetic malfunctions that may cause mutations and pose a biosecurity risk.
Chapter 3 – BIRAs (Clauses 165-170)	Biosecurity Import Risk Assessments (BIRAs) are used to evaluate levels of biosecurity risk and conditions for importing goods. Stakeholders can comment on draft BIRA reports before they are finalised ^(c170) .	Important to ensure BIRA process is transparent and results in best outcome for predicting/ assessing biosecurity risk. The advisory Eminent Scientists Group should be maintained, with it and third party industry expertise being allowed to contribute to the development of a BIRA, as well as comment on draft, preliminary and final BIRA reports ^(c170) . Often, expert knowledge in industry can assist with developing BIRAs, especially as government staff levels and their associated depth and breadth of agricultural knowledge decline.
Chapter 3 – Designated points of entry (Clause 145)	Goods only unloaded at designated first points of entry ^(c142-145, 147) , unless exemption for alternative arrangements ^(c146,148) or authorised under another Australian law ^(c48) .	All goods and conveyances should be subjected to biosecurity import conditions, including Department of Defence, visiting international defence departments and conveyances / goods governed by other Australian laws. For example, two outbreaks of the invasive pest, Siam weed – <i>Chromolaena odorata</i> on defence land at the Townsville Field Training Area and Shoalwater Bay, Qld were linked to movement of defence equipment.
Chapter 6 – Permanent monitoring zones (Clause 378)	Permanent monitoring zones are around areas such as first points of entry, international mail centres, biosecurity activity zones and other areas prescribed in regulations ^(c378) .	Monitoring zones are essential for high-risk areas such as ports, container ships and the Northern Australia coastline (Northern Australia Quarantine Strategy). Three of the four outbreaks of the invasive pest, imported red fire ant <i>Solenopsis invicta</i> - in Queensland have been associated with the Brisbane and Gladstone ports. The recent outbreak at Port

		<p>Botany in Sydney is also suspected from a cargo ship.</p> <p>The area monitored depends on the species, outbreak situation and the potential to proliferate until first detection. The <i>permissible distance</i> (^{c378}) should not be limited to 400 metres, as suggested in the Bill. Distance for all monitoring zones should be at the discretion of the Director of Biosecurity and/or regulations and based on technical knowledge of potential pests, diseases and invasive pests.</p>
Chapter 8 – Biosecurity emergency period	<p>Biosecurity emergency period can only be declared by the Governor-General^(c444).</p> <p>Biosecurity officers can enter without warrant or consent ^(c470, 472).</p>	<p>Biosecurity emergencies with highly contagious and rapidly spreading disease agents will require urgent response. Agricultural industries are entrusting government processes can declare and set up a biosecurity emergency within 24 hours. Legislation, regulations and devolved powers of authorised persons need to facilitate a rapid response.</p> <p>Is it ever possible for the Governor-General to be unavailable to declare, or incapable of declaring, an emergency? If so, there must be a provision in the Act for the Governor-General's power in this regard to be delegated.</p>
Chapter 8 – Biosecurity emergency period	<p>In an agricultural emergency, the Agricultural Minister can only direct persons to use specified clothing or equipment and not direct any human biosecurity measures such as examinations, samples or medical treatment ^(c448).</p>	<p>In the event humans were a carrier or vector for a high-risk animal or plant disease agent, the Minister for Agriculture and Minister for Health would work together to develop the best biosecurity measures to prevent or stop the biosecurity risk. This may require an agreement between Ministers for cross-surveillance between humans and animals and beyond the scope of Clause 448. One example would be managing antimicrobial resistant (AMR) microorganisms with no impact on humans and could be transferred to domestic or companion animals. The World Health Organisation (WHO) indicated management of AMR organisms in food-producing animals and the food chain is hampered by not having integrated, global surveillance systems from animals, food products <u>AND</u> humans (World Health Organisation Antimicrobial Resistance Global Report on Surveillance, 2014 http://apps.who.int/iris/bitstream/10665/112647/1/WHO_HSE_PED_AIP_2014.2_eng.pdf , page 6).</p> <p>‘One Health’ was a previous and current proposal to manage pandemics by unifying veterinary and human health issues with links to environmental health issues. CSIRO has stated, “<i>Approximately 70 per cent of emerging infectious diseases are zoonotic</i> (i.e., they can pass from animals to people)”. Collaborative, multi-discipline efforts are required to manage emerging infectious diseases (EIDs) such as the H7N9 avian influenza virus and SARS-like Middle East Respiratory Syndrome Coronavirus (MERS). More information on One Health is</p>

		available from the CSIRO Biosecurity Flagship website http://www.csiro.au/Organisation-Structure/Flagships/Biosecurity-Flagship/OneHealth.aspx#What
Chapter 8 – Biosecurity emergency period	The Agriculture Minister can declare the Australian Defence Force or any part of a Commonwealth body as a national response body ^(c454-456) .	<p>The Bill does not refer to any existing collaborative arrangements / deeds for biosecurity preparedness. In addition to the Minister considering national response agencies ^(c454-456), the Emergency Animal Disease Response Agreement (EADRA) http://www.animalhealthaustralia.com.au/programs/emergency-animal-disease-preparedness/ead-response-agreement/, PLANTPLAN http://www.planthealthaustralia.com.au/biosecurity/incursion-management/plantplan/ and National Environmental Biosecurity Response Agreement (NEBRA) https://www.coag.gov.au/node/74 should be considered as the primary references for collaborative emergency responses to animal disease, plant pest and biosecurity risk to the environmental or social amenity.</p> <p>NFF has also formulated a Critical Incident Response Plan as part of industry biosecurity preparedness and strategic co-ordinated communication.</p> <p>These collaborative biosecurity response agreements/deeds may also provide a compensation source, in some circumstances, where biosecurity measures result in significant loss of goods, stock and crops and loss of agricultural income.</p> <p>Is there opportunity to review the national agricultural levy systems to consider future contributions to relevant National Biosecurity Fund(s), which could be used for implementation of an emergency response and/or compensation for major loss?</p>
Chapter 11 – Miscellaneous Compensation	The Director of Biosecurity may approve compensation for goods, conveyances or premises damaged or destroyed in the course of performing duties (eg accidental damage) ^(c632-634) but not for damage resulting from treatments ^(c133,134,335,336) .	<p>Can compensation be considered when an existing host or vector already residing in Australia must be destroyed or damaged to eradicate a new biosecurity incursion? For example, destruction of Central Queensland citrus orchards to eradicate citrus canker.</p> <p>The Bill infers compensation may be payable to the owner of a destroyed premise ^(c633, 634), where ‘premise’ is defined as a whole or part structure, some conveyances or a place ^(page 23). Destruction of a whole or part crop or herd is not discussed in the Bill. Producers may lose their right to an adequate standard of living, if they lose their crop or herd from a required biosecurity measure. Hence the need for access to a Biosecurity Fund, if such a mechanism could be set up.</p>