



Australian Government
Department of Agriculture



Australian Government
Department of Health

**SENATE RURAL AND REGIONAL AFFAIRS
AND TRANSPORT LEGISLATION COMMITTEE**

Inquiry into the Biosecurity Bill 2014 and related Bills

**JOINT SUBMISSION
FROM THE
DEPARTMENT OF AGRICULTURE
AND
DEPARTMENT OF HEALTH**

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EXECUTIVE SUMMARY

The Australian Government Department of Agriculture and the Department of Health welcome the opportunity to provide a submission to the Rural and Regional Affairs and Transport Legislation Committee's inquiry into the Biosecurity Bill 2014 and related Bills.

This submission has also been developed in consultation with the Australian Government Department of Foreign Affairs and Trade and the Department of the Environment.

The Biosecurity Bill 2014 and related Bills have been developed in the context of a biosecurity system which is complex and operates in an environment of continual movement of people, goods and conveyances. As such, the legislation draws on a number of key principles – which include:

- Clear legislation to manage biosecurity risks
- Legislation for a strong agricultural industry
- Increasing efficiency and decreasing regulation
- Improving compliance, and
- Providing protection from public health risks.

The Department of Agriculture and the Department of Health have undertaken consultation with numerous sectors, industries, organisations and governments both in Australia and abroad regarding the legislation. Input from stakeholders has been, and continues to be a vital element of the legislative development process.

A number of areas of discussion have been undertaken with stakeholders. Key issues have included:

- Biosecurity Import Risk Analyses
- Regional differences
- Environmental biosecurity
- Warrant provisions
- Human Biosecurity Control Orders
- Review powers
- Jurisdiction changes from the Quarantine Act, and
- Ballast water.

The submission deals with each of these issues in detail and seeks to further explain the policy justification for these provisions.

Finally, the submission outlines the work to be completed to prepare the associated delegated legislation and for implementation, transition and commencement.

1. INTRODUCTION

Australia's people, economy and environment benefit significantly from a strong biosecurity system. Australia's unique pest and disease status helps to protect our way of life, including our environment, human health, and the wellbeing of our domestic animals and plants. This unique status means that our agricultural industries, environment and communities have remained free of many pests and diseases common elsewhere, giving Australia a comparative advantage in export markets around the world.

Currently, biosecurity is managed under the *Quarantine Act 1908* (Quarantine Act) and related regulations. Australia's biosecurity risks have changed significantly since the Quarantine Act was first drafted over a century ago. Shifting global demands, growing passenger and trade volumes, increasing imports from a growing number of countries and new air and sea craft technology have all contributed to a new and challenging biosecurity environment.

2. KEY FEATURES AND SUMMARY OF THE BIOSECURITY BILL 2014 AND COMPANION BILLS

2.1. A modern and effective regulatory framework

Australia's biosecurity system must be underpinned by a modern and effective regulatory framework. Whilst the Quarantine Act has enabled the management of biosecurity risks to date, it has been amended approximately fifty times, mostly to cater for the changing demands placed on the biosecurity system. These amendments have contributed to creating complex legislation that is difficult to interpret and contains overlapping provisions and powers.

The Biosecurity Bill 2014 (the Bill) will provide the primary legislative means and a modern regulatory framework for the Australian Government to manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy.

The Bill is designed to manage biosecurity risks—including the risk of listed human diseases—entering Australian territory, or emerging, establishing themselves or spreading in Australian territory or a part of Australian territory.

The Bill will also give effect to Australia's international rights and obligations, including under the *International Health Regulations 2005* (IHR), the *World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Agreement), the *UN Convention on Biological Diversity* (Biodiversity Convention) and the *International Convention for the Control and Management of Ships' Ballast Water and Sediments* (Ballast Water Convention) .

Australia's biosecurity system has been subject to review several times, and proposed reforms to strengthen the system have included the development of new biosecurity legislation.

The Bill will provide a strong regulatory framework to enable the management of biosecurity risks in a modern and responsive manner and enhances Australia's capacity to manage biosecurity risks into the future.

2.2. Key principles for the legislation

The biosecurity legislation package is designed to be clear, easy to understand and achieve the best biosecurity outcomes. The legislation has also been drafted to:

- support the natural and production environment
- minimise regulatory impact for compliant stakeholders
- increase compliance
- meet Australia's international obligations; and
- provide protection from public health risks.

The key principles are explored in further detail in the explanatory memorandum to the Biosecurity Bill 2014 (pp 8-11).

2.2.1. Clear legislation to manage biosecurity risks

The Biosecurity Bill provides a strong legislative framework that clearly sets out the powers that can be exercised by officials as well as the requirements of those being regulated. Comparative powers and obligations within the Bill are more clearly expressed than in the Quarantine Act and all are grouped in a logical way so that the table of contents can be used

to find relevant powers available for a particular subject. Many amendments made to the Quarantine Act resulted in duplicative powers, these duplications have been removed to provide for simple administration of the Bill.

2.2.2. Legislation for a strong agricultural industry

The Bill contains a range of powers to manage biosecurity risks offshore, at the border and onshore to protect the agriculture sector, who are likely to feel the biggest financial impacts in an exotic pest or disease incursion.

New powers within the Bill allow for the management of a wider range of pests and diseases already present in Australia and for the management of the biosecurity risk posed by the ballast water and sediment held on board domestic and international ships, which have the potential to damage industries that rely on the maritime environment – including fisheries and tourism.

The legislation has been designed to support Australia's export markets by sustaining current market access and facilitating new market access opportunities through maintaining Australia's favourable pest and disease status.

2.2.3. Increasing efficiency and decreasing regulation

The Bill is designed to achieve the best biosecurity outcome and where possible, reduce the regulatory burden experienced by compliant businesses that regularly interact with Australia's biosecurity system. The Bill will support the Department of Agriculture's current risk-based approach to biosecurity intervention, where resources are focused on the risks of greatest biosecurity concern, by providing flexible and responsive powers that allow biosecurity officials to best target risk based on the circumstances of each case.

The Bill allows businesses to enter into a single agreement with the Department of Agriculture to manage their biosecurity risks in an approved way and for a broader range of activities to be conducted under an arrangement. This replaces the quarantine approved premise and compliance agreement provisions in the Quarantine Act reducing regulation for many businesses by removing duplication and recognising modern business practices and systems that are already in place to manage biosecurity risk. By allowing biosecurity risks to be managed more flexibly, the Bill encourages more businesses to propose methods of managing biosecurity risk that can be incorporated into their existing business practices.

Key operational provisions from the Quarantine Act that impose unnecessary regulatory burden and are not required to manage biosecurity risks effectively have been modified. For example, under the Quarantine Act, all vessels and aircraft that arrive in Australia must arrive at a port or landing place that is declared to be a first point of entry unless permission for that arrival has been pre-applied for and granted. The Bill increases efficiency by allowing a business to apply for a standing permission to arrive in Australia multiple times over an identified period of time.

2.2.4. Improving compliance

The Bill includes improved compliance tools that are fit for purpose, modern and useful. These tools enable more effective and efficient targeting of non-compliant behaviour or activities. This means the Commonwealth can choose between different penalty options to

ensure that penalties imposed are proportional to the offence committed, and are balanced, consistent and based on the level of risk posed.

Two additional tests to address the risk posed by people or companies that have previously breached biosecurity laws are introduced in the Bill. These tests aim to ensure applicants for import permits and industry participants (for the purposes of approved arrangements) are suitable entities to be responsible for the management of the associated biosecurity risks. The tests consider a person or company's history of compliance with Commonwealth legislation and whether a person applying for an import permit or an approved arrangement is an associate of another person that the Department of Agriculture does not consider to be a fit and proper person.

The Bill contains a range of new warrant powers that allow biosecurity officers to enter premises and then use their powers to manage biosecurity risks. This means that the Commonwealth can more effectively find and manage biosecurity risks while a range of protections ensure that warrants are only issued in appropriate situations and only provide powers that are reasonably necessary to successfully execute a warrant.

2.2.5. Providing protection from public health risks

The Bill offers an effective and adaptive range of biosecurity measures to manage the public health risk posed by serious communicable diseases and is designed to be better aligned with modern science relating to treatment and management of such diseases. The Bill contains human health biosecurity measures which can be used not only to address the risk posed by the communicable disease, but can also be tailored to accommodate an individual's circumstances and are designed to ensure individual liberties and freedoms are considered and protected. The Bill is designed to further protect public health by allowing for measures such as passenger entry and exit screening, the management of exotic vectors onshore and aims to provide for the review of human biosecurity decisions to balance powers and functions with individual rights. The Bill also includes principles of general protection to be applied when exercising powers relating to human health provisions.

The Bill also has the ability to manage pests and diseases which can affect both animals and human health. Avian influenza is one of many diseases that may have both human health and agricultural sector impacts. During the 2009 Avian influenza pandemic, a number of powers were exercised to manage the risks to animal and human health. Such powers will continue to be available under the Bill, however they are more flexible and have an increased focus on screening and prevention activities. Such pests and diseases highlight the importance of the Department of Agriculture and the Department of Health's ongoing close working relationship.

2.3. Companion Bills

2.3.1. Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014

The Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014 (the Bill) makes transitional and consequential provisions to support the commencement of the Biosecurity Bill when it is passed, and it replaces the *Quarantine Act 1908* (Quarantine Act) as the Commonwealth's primary biosecurity legislation.

The transition from the Quarantine Act to the Biosecurity Bill needs to be managed to ensure that biosecurity risks are appropriately managed and that people, goods and conveyances are

able to move through the border without any delays or additional costs. Clear guidance will be provided to biosecurity officers and stakeholders to ensure they are aware of any rights or obligations which will continue to apply.

This Bill is being introduced to:

- repeal the Quarantine Act and the *Quarantine Charges (Collection) Act 2014* (Collection Act) to allow biosecurity risks to be managed under the Biosecurity Bill
- make consequential amendments to Commonwealth legislation to reflect the repeal of the Quarantine Act and replace with references to managing biosecurity risks under the Biosecurity Bill, and
- make transitional provisions to provide for the management of biosecurity risks during the transition from the Quarantine Act to the Biosecurity Bill.

Transitional provisions will ensure that biosecurity risks are managed in a way that is not administratively or operationally burdensome for the Commonwealth and business. The overall approach taken is one of maintaining existing policy approaches under the Quarantine Act and seeking alignment between powers, decisions and processes to ensure that decisions made and processes followed under the Quarantine Act continue have effect under the Biosecurity Bill. To this extent, most decisions or powers exercised under the Quarantine Act will be transitioned as though they were made or exercised under specific provisions of the Biosecurity Bill.

While both the Quarantine Act and the Biosecurity Bill provide similar powers for the management of biosecurity risks, there are some differences which require some Quarantine Act provisions to continue to operate until the completion of all biosecurity risk management activities involved.

2.3.2. *Quarantine Charges (Imposition – General) Amendment Bill 2014*
Quarantine Charges (Imposition – Customs) Amendment Bill 2014
Quarantine Charges (Imposition – Excise) Amendment Bill 2014

The amendments in these three Bills will allow the Commonwealth to ensure there is an appropriate legal structure to support the recovery of costs associated with indirect services under the Biosecurity Bill.

The amendments will allow the Commonwealth to impose charges in relation to prescribed matters connected with the administration of the Biosecurity Bill.

The legislation will sit alongside the fee-for-service cost-recovery mechanism within the Biosecurity Bill and support Australia's capacity to manage biosecurity risks into the future.

Authority to collect charges imposed by the Imposition Acts is provided by the Biosecurity Bill. The *Quarantine Charges (Collection) Act 2014* is being repealed by the Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014.

The Bills are enabling and mechanistic in character. They do not set the amount of charges and will not impose any financial impacts on businesses. The Bills authorise the imposition of charges in relation to matters connected with the administration of the Biosecurity Bill. These matters will be prescribed in the delegated legislation and will reflect the indirect biosecurity services provided by the Department of Agriculture. The amount of the cost-recovery charges and who is liable to pay will also be set in delegated legislation. Setting the charges through delegated legislation will allow the Minister for Agriculture to make appropriate and timely adjustments to the charges, avoiding future over or under recoveries.

2.4. Decision making in the biosecurity system

The Department of Agriculture and the Department of Health operate in a complex environment. Officers based around Australia and around the world support the biosecurity continuum that operates pre-border, at the Australian border and onshore. These officers are required to make important decisions, however, these decisions are informed by more than just the principles outlined in the legislation.

The Biosecurity Act will not stand alone as the single piece of legislation that biosecurity officials must take into account when making a decision under the Act. A wide range of information, regulatory requirements and departmental policy must be considered before deciding on whether to act under a power. This regulatory system is designed to minimise the chance of invalid decisions and the resulting impact on individuals and industry.

Officers use information and their skill and training to make decisions about how to manage biosecurity risks to Australia and to protect our biosecurity status. This decision making is informed by science, based on the principles of administrative law, is reviewable via the Administrative Appeals Tribunal or the judiciary and can be assessed against Australian Government standards.

2.4.1. Science in decision making

Science plays an important role in the work the Department of Agriculture does. It is the foundation of productive, competitive and sustainable agriculture, fisheries and forestry industries. It plays an essential role in public policy development and evidence based decision-making across the department.

The Department of Agriculture has embedded within it a wealth of scientific expertise which is readily accessible to assist decision makers. The department employs officers with tertiary science qualifications, including in aquatic animal health, botany, ecology, entomology, environmental science, food and nutrition science, geospatial analysis, microbiology, molecular biology, plant pathology, quantitative science, veterinary science and zoology. The department's scientific capability has evolved over time and its many forms suit varied business needs. Scientists use their expertise at the border, in the department's large multidisciplinary divisions including Animal Biosecurity, Plant Biosecurity and the Australian Bureau of Agricultural and Resource Economics and Science (ABARES). When appropriate, both departments use external scientific resources, both domestic and international.

The Bill has been drafted to continue to support Australia's science-based approach to biosecurity management and to ensure actions and decisions are based on risk, supported by science and draw on the advice of experts, including in animal and plant sciences, from across the nation and internationally.

The Bill deals with the management of biosecurity risks of goods and conveyances arriving from outside Australia, and the management of human health risks from international movements. This includes powers to assess and manage biosecurity risks.

For example, some goods will be prohibited from being brought in or imported into Australia. Others can only be brought in or imported if certain conditions are met. All these decisions are based on biosecurity risk and science is the foundation behind the assessment of risk.

In order to evaluate the level of biosecurity risk associated with goods that are proposed for importation into Australia, the Bill will allow the Director of Biosecurity to conduct a

Biosecurity Import Risk Analysis (BIRA) which is a science based risk assessment process for assessing potential biosecurity risks. The process for conducting a BIRA is largely administrative in nature and for this reason the details of this process will be included in the regulations and supporting guidelines rather than the Bill.

The Bill 'covers the field' for the importation of goods into Australia, namely the prohibition or imposition of import conditions to manage any identified biosecurity risks. This approach is important to ensure consistency in Australian import permissions and conditions, and that any sanitary and phytosanitary measure is based on scientific principles and is not maintained without sufficient scientific evidence. The Bill is designed to be consistent with Australia's obligations under the World Trade Organization (WTO).

The Bill offers an effective and adaptive range of biosecurity measures to manage the public health risk posed by serious communicable diseases, and is designed to be better aligned with modern science relating to treatment and management of such diseases. The Bill allows for the Director of Human Biosecurity to determine in writing a Listed Human Disease. A Listed Human Disease must be a communicable disease that is considered a significant threat to human health. The Director of Human Biosecurity is required to consult with state and territory public health officials and the Director of Biosecurity prior to making a determination. This inbuilt consultation mechanism ensures that a decision to designate a Listed Human Disease is based on the best available scientific, medical and public health evidence and thinking.

Under biosecurity legislation, science can contribute to decisions on sentencing for offences committed. The Bill contains a range of enforcement options including: infringement notices, civil penalties, enforceable undertakings and criminal sanctions. This means the Commonwealth can choose between different penalty options and ensure that penalties are imposed in proportion to the offence committed, and are balanced, consistent and based on the level of risk posed.

Science does not inform whether the department pursues a civil or criminal penalty. But once that decision has been made, the consequences of the conduct, such as the risk posed or the damage done, can be assessed by scientists using available information so that the court can understand the seriousness of the offence and use that information to determine an appropriate sentence.

2.4.2. Legislative environment

Decisions made by biosecurity officials are subject to the principles of administrative law. The administrative law system aims to provide for:

- government decision making which is fair, high-quality and effective
- individual access to review of both the merits and lawfulness of decisions and conduct
- accountability for government decisions and conduct, and
- public access to information about government decisions and processes, and individual access to personal information held by government.

Primary decision making by biosecurity officials will be open to internal review as determined by section 574 of the Biosecurity Bill. External merits review is also available by the Administrative Appeals Tribunal (AAT). Judicial review is available under the *Administrative Decisions (Judicial Review) act 1977*. AAT decisions can also be reviewed under section 44 of the *Administrative Appeals Tribunal Act 1975* on questions of law.

The *Privacy Act 1988* is the principal legislation governing the protection of personal information in the Commonwealth public sector and in the private sector. The Privacy Act includes Privacy principles addressing the collection, use, disclosure, quality and security of personal information as well as access to personal information. An individual may complain to the Office of the Australian Information Commissioner about certain interferences with his or her privacy, which includes where the individual believes there has been a breach of the Privacy Principles.

Biosecurity officials are also subject to the *Australian Public Service Act 1999* and the APS Code of Conduct and Values. The APS Code of Conduct and Values are not simply aspirational statements of intent. They are mandatory. A breach of the Code of Conduct can result in sanctions, ranging from a reprimand to termination of employment. All APS employees are required to uphold the Values and comply with the Code. Failure to do so may attract sanctions.

Biosecurity Enforcement Officers operate in a more complex environment. As they conduct investigations on behalf of the government they must comply with the standard administrative law requirements, but also with the minimum standards outlined in the *Australian Government Investigation Standards* (AGIS). The AGIS is a cornerstone of the Australian Government's fraud control policy and is the minimum standard for agencies conducting investigations relating to the legislation they administer. The AGIS outlines minimum standards for:

- investigation policy and performance management
- prosecution (identification of breaches and case selection) policy of the Commonwealth
- access to legislation
- investigator qualifications
- agency relationships
- foreign and international inquiries, and
- ethical standards.

3. CONSULTATION, ENGAGEMENT AND INFORMATION SHARING

Since 2009 the departments have been working with stakeholders to develop the new biosecurity legislation. The broad scope of the legislation meant the variety of stakeholders involved was vast and covered numerous sectors, industries, organisation and governments both in Australia and abroad.

Over 440 organisations have been consulted with over the last six years. This includes those who will be regulated by the legislation such as shipping, petroleum, logistics and research organisations and those who have an interest in the legislation such as environmental groups and farmers.

The departments consulted and sought views through workshops, roundtables, industry fora, international meetings, online blogs, submissions and meetings around the country.

To ensure industry involvement during the drafting phase of the Bill, the Department of Agriculture also established an Industry Legislation Working Group. The group consisted of 16 representatives including the Invasive Species Council, the National Farmers Federation, Shipping Australia, Qantas and the Custom Brokers and Forwarders Association. The input provided by this group enabled a greater understanding of their operational requirements and increased the identification of opportunities to create more efficient legislation.

Following agreement from the government to progress the legislation and to inform stakeholders about the changes made and the next steps, a Biosecurity Legislation forum was held on 24 October 2014. Approximately 80 organisations, bodies and agencies were invited to the Forum with just over 40 attending. Attendees were also asked to consider the areas of the Bill they would like to be consulted on as the regulations are developed.

Consultation and the input from stakeholders was and continues to be vital to the process. Submissions and informal feedback from all consultation activities were considered in the finalisation of the 2014 Bill.

Importantly, there will be more opportunities to discuss feedback and work with stakeholders in the development of regulations and administrative policies.

3.1. Stakeholder issues raised

Since 2012 a number of issues have been raised regarding the legislation. These primarily related to the biosecurity import risk analysis process, regional differences when conducting risk analyses, the eminent scientist group in the import risk analysis process, the role of the Director of Biosecurity and environmental biosecurity.

It should be noted that a significant amount of feedback received from stakeholders in 2012 related to the development of the delegated legislation (e.g. regulations and determinations) supporting administrative policies and current processes and activities undertaken by the department. Further, the feedback included support for new legislation to replace the Quarantine Act, and the majority of the Biosecurity Bill 2012 did not receive any comment.

As a result of the 2012 consultation and through continued engagement with industry, changes have been made to the text of the Biosecurity Bill 2014, clarification has been provided and input confirmed for the development of the regulations.

4. KEY AREAS OF DISCUSSION

4.1. Biosecurity Import Risk Analyses

Many of the issues raised by stakeholders related to the biosecurity import risk analysis provisions within the Biosecurity Bill 2012 and draft regulations. This included the eminent scientists group, the use of external scientific expertise, regional differences, consultation and transparency.

Many of the issues raised were reflective of concerns with the current import risk analysis (IRA) process. Noting this, and ongoing inquiries, the government committed to examining the IRA process to ensure robust arrangements are in place to minimise the risk of exotic pests and diseases incursions. This examination has been conducted separately to the development of the biosecurity legislation and recommendations are to be provided to the government for consideration.

To better understand stakeholder concerns around the IRA process, a separate and extensive consultation process was undertaken. It focused on:

- transparency and consultation during the IRA process
- the use of external scientific and economic experts
- consideration of regional differences in animal or plant health status during the IRA process.

The consultation process, undertaken over several months, comprised a discussion paper, group discussions around the country and a formal submissions process.

During the consultation and discussions on the risk analysis process the following points were raised:

- Consultation and information provision – there are opportunities to improve how, when and why the department consults and provides information during a risk analysis process.
- Eminent Scientists Group – views on the Eminent Scientists Group (ESG) varied from proposals to have the group abolished, to requiring strengthening, to maintaining the current system. How the department can better use the ESG and other external expertise is being considered.
- Science in the IRA process – many were not aware that the department uses external expertise when conducting risk assessments highlighting the need for more effective communication.
- Role for industry – many asked for greater clarification around the role of industry in the process and when this occurs.

The majority of stakeholders the Department of Agriculture met with are largely satisfied with the current IRA process, which is similar to the proposed process outlined in the Bill. This sentiment is also reflected in many of the submissions to the examination. The issues raised also related exclusively to policies and administrative processes as opposed to current legislation and the Biosecurity Bill 2012.

The Department of Agriculture intends to continue to work with stakeholders in relation to opportunities for improvements to the risk analysis process as the legislation progresses and the development of regulation, policy documents and supporting material is underway.

4.2. Regional differences

The issue of regional differences was raised by a number of stakeholders during consultation on the 2012 Bill. Some stakeholders considered that the legislation did not include appropriate consideration of regional differences during risk analysis processes. This issue was further explored during consultation on the IRA examination.

To address concerns, the provisions in the Biosecurity Bill 2014 have been strengthened to include a note in the provisions for conducting biosecurity import risk analyses which explicitly states that the department can and will consider areas of different pest or disease status when conducting IRAs under the Biosecurity Bill 2014.

Australia does not use the words 'regional difference' in legislation because it is not a term defined in relevant international agreements or standards. The Biosecurity Bill 2014 uses the words 'part of Australian territory' to enable consideration of 'regional differences'.

This wording has been included in addition to the definition of biosecurity risk which is defined as the likelihood of a disease or pest, entering Australian territory or a part of Australian territory; or establishing itself or spreading in Australian territory or a part of Australian territory.

The Department of Agriculture will continue to work directly with stakeholders regarding the consideration of regional differences within the legislation and the IRA context.

4.3. Environmental biosecurity

Biosecurity risks to the environment are managed across the biosecurity continuum. The Department of Agriculture analyses risks to Australia, in doing so the environment is a key consideration. The Department of Agriculture has networks and surveillance in place to assist with this task, in cooperation with the states and territories. The Department of Agriculture also has a foresight capability where it looks overseas to assess and manage risk.

Environmental biosecurity is specifically considered in the Bill through the definition of 'biosecurity risk' in clause 9, which gives the same weight to potential harm to the environment as to human, animal and plant health.

The Bill helps to give effect to Australia's international rights and obligations under the Convention for Biological Diversity. In particular, clause 26 of the Bill extends the Commonwealth's powers to allow for the management of invasive pests. This will provide powers for preventing the introduction of, or controlling or eradicating, invasive pests which threaten ecosystems, habitats or species, consistent with articles 7 and 8 of the convention.

Additionally, the Bill will allow the Commonwealth to implement the International Convention for the Control and Management of Ships' Ballast Water and Sediments to create a single, Australian-wide ballast water management regime. This will minimise the risk of a marine pest incursion caused by the discharge of ballast water. This will give effect to the obligations that Australia will have once the convention comes into force.

4.3.1. *Extension of the Act to External Territories*

Similar to the Quarantine Act, the Biosecurity Bill will enable the management of biosecurity risks in external territories where a formal pest and disease survey has been completed. This is managed through subclause 7(1) of the Bill, which extends the provisions of the Act to Christmas Island and Cocos (Keeling) Islands. Formal pest and diseases surveys have been

undertaken in relation to these places and they are known to have a different pest and disease status to the rest of Australian territory.

Subclause 7(2) provides that any provision of the Act may be extended to other external territories prescribed in the Regulations. The provisions of the Act will be extended to other external territories once a formal scientifically based, risk assessment (such as a pest and disease survey) has been undertaken. This approach has been taken because the biosecurity risks associated with external territories where a risk assessment has not been undertaken are unknown, and free movement of people, conveyances and goods between such territories and mainland Australia could pose a significant biosecurity risk. It is possible that the Act will be extended to other external territories (such as the Coral Sea Islands and Norfolk Island) once a formal pest and disease risk assessment has been undertaken.

The Regulations will extend the application of the Act to Ashmore and Cartier Islands consistent with the current arrangements under the *Quarantine Act 1908*.

The legislation will not be extended to Heard Island and McDonald Islands. As sub-Antarctic islands, they are managed as part of the Australian Antarctic Territory under their own legislation, which includes a consideration of biosecurity risks as part of broader environmental protection measures.

An island or reef that is part of a state or territory is legally the same as any other part of a state or territory and will be covered by the Bill as well as by relevant state and territory law.

4.3.2. Modifications of the Act to manage areas of different risk status

Clauses 618 to 624 of the Bill set up a scheme to enable the management of specific areas of Australian territory that have a different risk status than the rest of Australian territory, and would not be effectively managed through the general provisions of the Bill. For example, if there are different biosecurity risks between the mainland and an external territory then different import conditions could be set to manage that difference.

Areas intended to be regulated under this scheme include Christmas Island, the Cocos (Keeling) Islands, and the Torres Strait region. The scheme is flexible and will enable the regulation of additional areas in the future, if required. These provisions will enable regulatory schemes currently set out in the *Quarantine Act 1908* to continue.

4.4. Warrant provisions

In recent times concerns have been raised regarding the use of warrants and the ability of biosecurity enforcement officers to enter premises without a warrant. The Bill provides for biosecurity enforcement officers to enter premises (including buildings and vessels) under a warrant or with consent of the occupier and exercise certain powers.

In certain circumstances biosecurity officers are able to enter premises and exercise powers without a warrant or consent. Officers can enter premises of approved arrangement or a first point of entry as they are environments of higher biosecurity risk and there is an existing business arrangement between these premises and the Commonwealth.

During an emergency, appropriately trained biosecurity enforcement officers and biosecurity officers need the power to quickly enter premises during a declared biosecurity emergency where they suspect on reasonable grounds that the declaration disease or pest may be present and to assess and manage that disease or pest as necessary. Entry would only be

permitted when an emergency had already been declared by the Governor-General on the advice of the Minister for Agriculture.

The Bill provides for specific warrants to be applied for and executed in particular circumstances. The types of warrants that may be applied for under the Bill are:

- a monitoring warrant
- an investigation warrant
- a biosecurity risk assessment warrant
- a biosecurity control order warrant
- a biosecurity response zone warrant
- a biosecurity monitoring zone warrant
- an adjacent premises warrant
- a conveyance possession warrant
- a premises possession warrant

As far as possible warrant provisions under the Bill are consistent with the *Regulatory Powers (Standard Provisions) Act 2014* (RPA). The RPA provides for a framework of standard regulatory powers exercised by agencies across the Commonwealth.

Where necessary the Bill departs from the warrant provisions under the RPA to ensure that a warrant issued and exercised under the Bill covers the unique requirements and measures in place to manage biosecurity risk. This includes prescribing warrants for a specific biosecurity purpose and allowing samples and animals to be taken to assist biosecurity enforcement officers exercising powers under a monitoring or investigation warrant.

The Bill includes a range of protections to ensure that warrants are only issued in appropriate situations and only provide powers that are reasonably necessary to successfully execute a warrant. These protections include that:

- a magistrate, or Judge of a court of a state or territory or Federal Court must be satisfied that it is reasonably necessary that biosecurity enforcement officer/s have access to the premises for the purpose of executing the warrant
- that the content of the warrant include specific information, such as the premises the warrant relates to and the purpose for which the warrant has been issued
- a biosecurity enforcement officer must carry his/her identity card at all times when exercising powers under a warrant.

The Bill also prescribes specific protections for warrants that are issued for a specific biosecurity purpose including that the appropriate test be met or issuing the warrant under clause 489 of the Bill and that specific information be included for specific kinds of warrants.

4.5. Human Biosecurity Control Orders

The human health provisions of the Bill allow for the enforcement of a Human Biosecurity Control Order. A Human Biosecurity Control Order can only be imposed on an individual that may have a Listed Human Disease, and is subject to the principles of general protection and external review processes under the judicial system and the Administrative Appeals Tribunal. An individual may provide consent to measures contained in the Human Biosecurity Control Order; however, the Director of Human Biosecurity can provide a direction to comply with the measure if consent is not given.

A Human Biosecurity Control Order requires an individual to submit to measures that are intended to reduce the risk of transmission of a Listed Human Disease, and may include

vaccination, restriction of behaviour, isolation, travel movement measures, examination and treatment.

The Bill also provides that, where an individual has been given a direction by the Director of Human Biosecurity to comply with a biosecurity measure included in a Human Biosecurity Control Order and still refuses to consent to the biosecurity measure, the Director of Human Biosecurity must review the diagnosis (if any) of the Listed Human Disease and the inclusion of the measure in the order. This ensures that biosecurity measures are only applied where they are fit for purpose and necessary.

4.6. Review powers

Transparency and the ability of the government to undertake a review of the performance of functions under the Bill is important to stakeholders and provides a level of confidence to those who interact with the biosecurity system.

The Bill will provide the Agriculture Minister with powers to review the performance of functions, or exercise of powers, by biosecurity officials under one or more provisions of this Bill. These powers will allow the Agriculture Minister, or his or her delegate, to conduct reviews into the biosecurity system to identify opportunities for improvement in the assessment and management of biosecurity risks.

As the review powers are provided to the Minister, reviews will be conducted independently from the department, ensuring independence between the subjects of the review (biosecurity officials) and the powers of the person conducting the review. The Minister will be able to delegate the review powers to an appropriately qualified or experienced person such as the Inspector-General of Biosecurity.

To ensure that the scope of the review is focussed on the effectiveness of the biosecurity system in general, a review cannot be conducted into the single performance of a function, or a single exercise of a power by a single biosecurity official. It is intended that reviews will be general in nature and of the whole or specific parts of the biosecurity system.

The Agriculture Minister will be provided with the power to require a person to answer questions or provide documentation if the Minister believes on reasonable grounds has information or documents relevant to a review. These powers ensure that the reviewer has access to the necessary information to appropriately review processes within the biosecurity system.

The review powers will contribute to Australia's biosecurity system by providing for an independent review of the performance of functions and exercise of powers by biosecurity officials. It is intended that the system will be regularly reviewed resulting in overall system improvements and provide an assurance framework for stakeholders of the system. This will ensure that Australia's biosecurity system maintains its integrity and continues to improve into the future.

4.7. Jurisdiction change from the *Quarantine Act 1908*

The Biosecurity Bill will operate to manage biosecurity risks on Australian land and within Australia's territorial sea (out to 12 nautical miles). This means that any installations outside 12 nautical miles will no longer be regulated by the Bill.

The reason for this change is that regulation under the Quarantine Act largely focuses on interactions between an installation and an international conveyance. However, this is not the primary area of biosecurity risk.

The Bill will achieve better risk management outcomes by shifting the legislative focus to conveyances that enter Australian territory. This may include both international and domestic conveyances. Installations are remote and located in deep waters beyond the 12 nautical mile mark. This remoteness means that the installation itself, and any interactions with international conveyances that do not travel on to mainland Australia, do not pose a significant biosecurity risk.

It is movements by domestic conveyances travelling between the installation and mainland Australia that pose the greatest biosecurity risk. This risk comes predominantly from food waste from supplies obtained overseas, and can be transferred on board domestic conveyances that pick up the waste and dispose of it on the mainland.

It can be difficult and dangerous for the Commonwealth to undertake monitoring activities far out at sea for international conveyances. There are significant training and workplace health and safety requirements for the Department of Agriculture that are not justified by the level of biosecurity risk posed.

On face value, conveyances travelling between Australia and an installation outside 12 nautical miles would be subject to additional requirements based on this change. This may include pre-arrival reporting and seeking permission to land if the conveyance does not travel to a first point of entry. Operators of domestic conveyances that travel to installations might incur higher costs, as the conveyance will become subject to biosecurity control each time it enters 12 nautical miles and may have to provide a pre-arrival report and seek permission to land.

However, it is intended that the Bill will allow for pre-arrival reporting exemptions through regulations and applications for a standing permission to enter a non-first point of entry by operators, in order to minimise these costs.

It is the Department of Agriculture's intention to work with installation operators to manage biosecurity risks at their installation, and reduce the costs experienced by the operators of domestic conveyances. Installation operators may also be able to apply for an approved arrangement with the Department of Agriculture, potentially with multiple entities under the one agreement, to manage biosecurity risks.

As individual circumstances need to be taken into account when assessing an installation's level of risk there will be different options available to different operators to lessen their regulatory burden.

Regulatory burden has also been removed from installation operators as their installations will be beyond the Bill's jurisdiction. As such, all international vessels arriving at the installation will no longer be required to provide pre-arrival reporting to the Department of Agriculture.

4.8. Ballast water

The Bill regulates the use of ballast water and management of sediment by Australian and foreign vessels in Australian seas. It creates a single, Australia-wide ballast water and sediment management regime. Some vessels will be exempt from these provisions, for example warships and government owned vessels.

Some regulated stakeholders have raised concerns regarding the implementation of the ballast water provisions. It is the Department of Agriculture's intention, where appropriate, to liaise with regulated stakeholders regarding the development of any regulations and administrative policy.

The Bill contains requirements for dealing with ballast water. Ballast water that has not been managed in accordance with these requirements is considered an unacceptable risk and cannot be discharged. It will be an offence to discharge ballast water in Australian seas, unless one of the following defences applies:

- it was discharged at a ballast water reception facility
- there was an approved ballast water exchange
- an approved ballast water treatment system was used
- the ballast water discharge was required for safety, there was an accident or to minimise pollution
- the taking up and discharging of water happened at the same place, or
- the discharge is covered by an exemption given by the Director of Biosecurity.

Australian vessels will be required to carry a ballast water record book to record the details of their ballast water uptake and discharge. There will be no requirement on foreign vessels to keep records. However, if foreign vessels want to access some of the exceptions relating to managing ballast water they will need to have ballast water records.

The ballast water management certificate certifies that the vessel, and any equipment on the vessel, can manage the vessel's ballast water in accordance with its ballast water management plan.

A ballast water management plan outlines the ballast water management methods used by the vessel and how sediments should be disposed of.

- Australian vessels will have their plans approved by the Director of Biosecurity.
- Foreign vessels will have their plans approved by a relevant authority under the flag they are flying.

All vessels intending to discharge or actually discharging ballast water in Australian seas will be required to provide a report. This will allow for any associated biosecurity risks to be managed more effectively and efficiently.

The Bill will enable biosecurity officers to carry out monitoring activities, such as examining and taking samples of ballast water, and inspections of the vessel, its machinery or equipment. The Director of Biosecurity will be able to issue movement directions in relation to vessels and direct the master of a vessel not to discharge the vessel's ballast water. If a vessel is unduly detained or delayed as a result of an action undertaken by a biosecurity officer, the owner may claim reasonable compensation from the Commonwealth.

5. REGULATIONS AND LEGISLATIVE INSTRUMENTS

The department will work with the Office of Parliamentary Counsel to prepare the draft delegated legislation. The biosecurity legislation authorises the making of a number of different types of delegated instruments. Regulations will be the key pieces of delegated legislation. A number of determinations (such as the prohibited and conditionally non-prohibited goods determination) and declarations (such as a draft emergency declaration) will also be prepared. It is expected that the delegated legislation will be released for public comment in 2015.

Subordinate legislation is being developed for the following areas:

- human health (Chapter 2)
- information gathering (Chapters 3 and 4).
- general goods (Chapter 3)
- prohibited and conditionally non-prohibited goods (Chapter 3)
- general conveyances (Chapter 4)
- first points of entry (Chapter 4)
- ballast water and sediment (Chapter 5)
- post-border monitoring, control and response (Chapter 6)
- approved arrangements (Chapter 7)
- biosecurity emergencies (Chapter 8)
- compliance and enforcement (Chapter 9)
- governance and officials (Chapter 10)
- cost recovery (Chapter 11)
- application of the biosecurity legislation to the Torres Strait and Australian territories (Chapter 11).

Where appropriate the departments will seek to engage stakeholders who will be regulated by these instruments during the development of these and the associated departmental administrative policy and instructional material. The departments' administrative policy provides officers with instructions regarding how the legislative instruments should be interpreted and when and how to perform certain functions under the legislation.

6. IMPLEMENTATION, TRANSITION AND COMMENCEMENT

6.1. Implementation

The implementation program involves delivering a series of prioritised projects on subject areas of the legislation. The objective of each project is to implement new administrative practices and subordinate legislation.

The delivery of the projects will be overseen by a program management function to ensure that there is a managed and collaborative approach to delivering the changes.

The departments will be working to make sure that biosecurity officers have the tools, training and information they need to be ready for commencement when the new legislation is passed by Parliament.

As the Bill will be co-administered by the Minister for Health and the Minister for Agriculture both departments will be working closely to ensure policies and approaches are aligned where appropriate.

Similarly, the departments will engage and consult with colleagues in other Australian Government agencies.

The Department of Agriculture will be working with stakeholders, clients and the state and territory governments to design and develop delegated legislation and policies that underpin the legislation in readiness for commencement. Additional information will be provided on the Department of Agriculture's website as work progresses.

6.2. Transition

The primary focus of the transitional provisions is to ensure that biosecurity risks are managed in a way that is not administratively or operationally burdensome for the Commonwealth and business. This will allow time for stakeholders to adjust to the new legislative requirements, particularly where these requirements may lead to changes in current business processes.

The transitional arrangements will maintain existing policy approaches under the Quarantine Act and will align powers, decisions and processes to ensure that decisions made and processes followed under the Quarantine Act continue have effect under the Biosecurity Act.

Directions, permissions or notices, given or required under the Quarantine Act relating to the assessment or management of biosecurity risks associated with the goods or conveyances will continue to have effect, either by continuing the requirement to comply or transitioning it to a direction, permission or notice given or required under an equivalent provision in the Bill.

This will ensure that biosecurity risks will continue to be managed appropriately and that biosecurity officers do not need to give directions, permissions or notices again and that stakeholders are not delayed by having to seek permissions again.

First points of entry will have a three year transition period, during which landing places or ports do not need to meet the requirements for first points of entry under the Bill. This three year transition period will provide port and landing place operators additional time to upgrade their facilities (if necessary) and undertake any additional activity to satisfy the requirements. This transition period can be extended to provide additional time for a first point of entry to meet these requirements.

Co-regulatory approvals and compliance agreements under sections 46A and 66B of the Quarantine Act in force immediately before the commencement day will become approved arrangements under the Bill. Biosecurity industry participants will have up to three years to meet the requirements under the Bill.

6.3. Commencement

Sections 1 and 2 of the Bill will commence on the day the Bill receives Royal Assent. This gives effect to the commencement provision of the Bill, which provides that the remaining sections will commence on a day fixed by proclamation or, if no day is fixed for commencement within 12 months of Royal Assent, the sections will commence on the day after the end of the 12 months.

The delayed commencement will allow time for new legislative requirements to be embedded and communicated to stakeholders, industry participants and the general public. It will also allow for biosecurity officials and industry participants to undergo appropriate training.

Like the Biosecurity Bill, sections 1, 2 and 3 and Schedule 3 of the Biosecurity (Consequential Amendments and Transitional Provisions) Bill will commence on the day the Bill receives Royal Assent. The remaining sections of the Biosecurity (Consequential Amendments and Transitional Provisions) Bill are to commence at the same time as section 3 of the Biosecurity Bill—that is, on the day fixed by proclamation or the day after the end of the 12 month period after Royal Assent.

Commencement of the Biosecurity (Consequential Amendments and Transitional Provisions) Bill I is delayed ensure that amendments to other Commonwealth legislation and repeal of the *Quarantine Act 1908* will only take effect once all of the provisions of the Biosecurity Act commence.