

Submission to the Senate Inquiry into the Biosecurity Bill and Inspector General of
Biosecurity Bill 2012

Department of Health and Ageing

Introduction

The *Quarantine Act 1908* (the Quarantine Act') is the primary source of legislative power for protecting Australia from the public health threat posed by exotic diseases. Much has changed in that time since the Quarantine Act was first written. International travel is rapid and routine and human rights have become paramount in domestic and international law.

A review of Australia's quarantine and biosecurity arrangements in 2008 (The Beale Review) recognised that the Quarantine Act is out dated, inflexible and difficult to use. The Beale Review recommended that the Quarantine Act be replaced with modern biosecurity legislation. The narrow concept of "quarantine" (actions at the border) was to be replaced with a broader "biosecurity" framework of actions taken pre-border, at the border and post-border.

The human health provisions of the Quarantine Act, particularly those relating to isolation and treatment, have rarely been used in the last 20 years. It is expected the human health provisions of the Bill will also be seldom used, given the diseases to be managed are rare, and that historically, individuals who are seriously ill have voluntarily sought medical attention without the need for legislative provisions to be applied. It is important, however, that legislative power be available to manage these diseases should they occur.

The Department of Agriculture, Fisheries and Forestry has led the development process, and as co-administrators of the Biosecurity Bill (the 'Bill'), the Department of Health and Ageing has developed the human health provisions.

The submission provides an overview of the:

- Human health provision of the Bill including the proposed List of Human Diseases; and
- Concerns of the two public submissions which specifically addressed human health, including the subsequent changes made to provisions post-exposure draft.

Overview of human health provisions of the Bill

The human health provision of the Bill will reflect a contemporary understanding of an individual's human rights. In all decisions relating to the application of biosecurity measures, an individual must be advised of the reasons for decisions being made, have their consent sought to undertake personally invasive measures, and be provided with the right to review of decisions that affected them.

List of Human Diseases

All powers must only be used to address a restricted List of Human Diseases, determined by the Director of Human Biosecurity in consultation with the Chief Health Officers of each State and Territory. The application of powers has been restricted because many of the powers are personally invasive and should only be available to address serious communicable diseases identified as requiring Commonwealth intervention.

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The proposed List of Human Diseases are yellow fever, viral haemorrhagic fevers of humans, human influenza with pandemic potential, smallpox and SARS. These diseases were identified as warranting intervention under the Bill because they are diseases that may:

- (a) be able to emerge, establish or spread in Australia, as a result of entry via a person, causing human health effects that are likely to be significant from a human health perspective;
- (b) have the potential to cause a pandemic or epidemic in Australia that may overwhelm the health capacity of a state or territory; or would require national coordination via the use of biosecurity measures; or
- (c) be subject to screening on entry or exit at the request of the World Health Organization (WHO).

In creating the proposed List of Human Diseases, the Commonwealth consulted with, and sought advice from, Australia's leading infectious disease experts, and State and Territory Chief Health Officers.

The List of Human Diseases may be amended at any time to include new communicable diseases that are deemed to warrant Commonwealth intervention.

Principles of general protection

In addition to restricting the powers for managing human health risks to managing the List of Human Diseases, the principles of general protection must be considered before exercising a power or imposing a biosecurity measure. This ensures that powers are used only when the circumstances are sufficiently serious to justify them, and only if the biosecurity measure is likely to be effective, is proportionate, and is the least restrictive or intrusive that is required to manage the disease risk.

Biosecurity measures

The Bill moves away from the Quarantine Act's focus on isolation of ill or potentially ill individuals to provide a range of biosecurity measures to manage the risk posed by serious communicable diseases. These include requiring an individual to regularly update an officer of their health status, providing body samples for diagnosis, undertaking treatment, restricting personal behaviour to reduce the spread of disease to others, and being isolated at a medical facility. The range of measures available in the Bill requires officers to consider the disease risk together with the individuals' circumstances, including medical history, and apply the most appropriate and least restrictive measure in the circumstances.

Due to the potentially personally invasive nature of some biosecurity measures, individuals must give their informed consent prior to their application. In the absence of consent, the Director of Human Biosecurity may review the application of biosecurity measures and issue a direction for the individual to comply. The Bill includes explicit protections for vulnerable groups including children and persons with disabilities. If the ill individual is a child, or is incapable of giving consent, then consent must be gained from

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an authorised person such as a parent, guardian or next of kin. If the ill individual is not an Australian citizen, they must be allowed to contact their consulate as soon as practicable.

Right to review

Critical to the application of biosecurity measures is the right to review. The Bill provides for individuals to seek internal review by the Director of Human Biosecurity and a general right of all individuals to seek review of administrative decisions under the *Administrative Decisions (Judicial Review) Act 1977*. In addition, individuals may also seek independent external merits review of isolation and traveler movement measures by the Administrative Appeals Tribunal (AAT).

Further implementation of the International Health Regulations 2005 (IHR)

The Bill also seeks to further implement Australia's obligations as a signatory to the IHR. The purpose and scope of the IHR is to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade.

The Bill provides for the application of exit screening of individuals where there is an identified risk of a Listed Human Disease spreading to another country. Individuals may also have their travel temporarily restricted in the event they are suffering from a Listed Human Disease, and it is determined that travel on an international passenger vessel or aircraft may increase the risk of transmission of the disease to fellow passengers or individuals in the destination country.

Governance Arrangements

The Bill provides for the appointment of Human Biosecurity Officers and Chief Human Biosecurity Officers who have powers and functions to manage individuals suspected of having a Listed Human Disease or who have been exposed to a Listed Human Disease. These officers must have clinical expertise or be medical practitioners. State or Territory officers may be appointed as Commonwealth Human Biosecurity Officers under agreement with their respective State or Territory. This is consistent with the current arrangements under the Quarantine Act.

Biosecurity Officers, appointed by the Director of Biosecurity, will be vested with powers to ask questions and require information of an individual and to apply non personally invasive biosecurity measures where appropriate.

Managing human biosecurity emergencies

The Bill provides for the declaration and management of a human biosecurity emergency, where a Listed Human Disease is posing a severe and immediate threat, or is causing harm, on a nationally significant scale. The List of Human Diseases can be rapidly amended to include new or emerging diseases to facilitate a response by the Commonwealth.

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In determining requirements or giving directions, the Health Minister may give effect to recommendations made by the WHO under Part III of the IHR. During a public health emergency of international concern, the WHO may make temporary recommendations which include health measures to be implemented by State Parties experiencing the public health emergency, or by State Parties to prevent or reduce the international spread of a disease. The Bill allows the Health Minister to consider and implement temporary recommendations made by the WHO, enabling Australia to respond nationally, regionally and globally to an international disease outbreak in a manner consistent with other State Parties.

Stakeholder Consultation

A staged exposure draft release of the legislation commenced on 4 July 2012, and the Department engaged directly with each State and Territory, and health specific stakeholders on the human health provisions. In addition, representatives of each State and Territory were involved in the development of the human health provisions of the Bill.

Two public submissions specifically addressed human health. WA Health raised issues with the interaction of Commonwealth and State legislation in managing an emergency; and the role of State officers in performing Commonwealth functions. The Bill does not seek to change the existing arrangements for managing human health emergencies, and consistent with current arrangements, will be managed through National Health Emergency Response Arrangements. The Commonwealth has committed to engaging with States and Territories in the implementation of the Bill to ensure the National Health Emergency Response Arrangements reflect the interaction of the Commonwealth and State/Territory health and emergency management legislation.

The President of the Administrative Appeals Tribunal expressed some concerns about the availability of independent external merits review of decisions during a human biosecurity emergency and proposed some minor amendments to better facilitate the merits review process. These include placing an obligation on the Director of Human Biosecurity to provide a statement of reasons for his/her decision and relevant documents to the Tribunal and the individual, specifying legislative timeframes for the provision of these documents to facilitate a timely and complete review, stating that if the timeframes are not met the order automatically lapses, and taking all reasonable steps to facilitate an individuals' access to the Tribunal.

The majority of the proposed amendments have been adopted, including access to independent external merits review during an emergency. The proposal that orders automatically lapse if the timeframes for provision of documents by the Director of Human Biosecurity were not met was not adopted, as this was determined to be an unacceptable outcome for managing the human health risk as the consequence of an order lapsing, leading to an inability of the Commonwealth to manage the Listed Human Disease, significantly outweighed the consequences arising from a delay on providing documents to the Tribunal.