

Submission on the new biosecurity legislation

Australian Veterinary Association

Executive summary

The *Quarantine Act 1908* has provided a sound legislative base for strong quarantine operations and the platform on which Australia's biosecurity is able to meet the stringent requirements of the World Trade Organisation.

The AVA welcomes the development of the Biosecurity Bills. We see it as modernising the legislation and ensuring a seamless link with state and territory legislation, particularly that of controlling animal and plant diseases. Existing Commonwealth quarantine and biosecurity legislation addresses the international barrier. State and territory legislation addresses the domestic situation. Uncertainty was created when the Commonwealth terminated the agency arrangement under which quarantine operations were performed by the states and territories on behalf of the Commonwealth. That change also depleted state biosecurity staff.

The AVA supports the move to risk-based and co-regulatory approaches, provided that monitoring of risks and evaluation of outcomes ensure that a high level of biosecurity is in fact being maintained. National and international benchmarking will help demonstrate that risk-based approaches are delivering the necessary outcomes.

The Sanitary and Phytosanitary Agreement and the Technical Barriers to Trade Agreement of the World Trade Organisation carry obligations for Australia. These international agreements require that decisions to allow or refuse market access on biosecurity grounds be based on risk assessment and be evidence-based. Debate and legal challenges to access decisions occur when the local community questions the science and seeks protection from economic and biosecurity damage. The Bills appear to provide legislated authority for import risk analyses and co-regulation. Expert legal opinion may be required to ensure that they meet Australia's obligations and needs. Evidence-based decision making on access to the Australian market and import and operational policy is essential.

Government and private veterinarians are involved in biosecurity at operational and policy levels. Some details of their roles are given below. This needs to be recognised in the Bills.

General comments

The Matthews Review of Australia's preparedness for the threat of foot-and-mouth disease (FMD) recommended roles for volunteers and strong risk-based biosecurity barrier measures such as the Broker Accreditation Scheme, Quarantine Approved Premises and identification of the party responsible for complying with quarantine inspection direction. These approaches have the potential to facilitate biosecurity operations and make them more efficient. They enable resources to be employed in meeting the greatest risks. They reduce costs and impediments to commerce. However specific authority is not provided under the *Quarantine Act 1908*. The stakes are high and challenges will inevitably occur. The Bills appear to provide the necessary support to regulatory and co-regulatory control measures.

The Matthews Review also noted the need for leadership by the Commonwealth and the Council of Ministers to ensure effective biosecurity protections are maintained. The AVA feels that the biosecurity Bills address these recommendations.

The Bills clarify the responsibilities of the Director of Biosecurity and the Biosecurity Officers, and vest power in them to authorise very strong actions when needed. This has always been, and remains, the basis of Australia's biosecurity. The Bills also recognise the constitutional division of powers.

The AVA notes that these Bills are not solely based on the quarantine power of the Commonwealth, but also on other powers, such as the trade and international powers, enabling Commonwealth measures to articulate with state measures. This rectifies a deficiency in current legislation.

Chapter 3 – Managing biosecurity risks: goods

Consideration should be given to providing specific powers for addressing risks of certain goods, particularly animals and plants, in the same way as provisions are made to address those to human health. It may be necessary for particular goods, such as live animals and plants, to be subjected to diagnostic or expert assessment or placed under managerial controls as to location and biological security. Animals may have to be euthanased in situ. Potentially rabid animals would need special handling, controls, diagnostics and care.

Particular skills are needed for certain procedures and there should provision for such to be handled by a "Biosecurity Officer who is a registered veterinary surgeon" as in the existing legislation. The AVA recommends that this level of detail should be included in these Bills.

Chapter 6 – Prevention and control measures

This Chapter is of major importance to the veterinary profession. Government veterinarians have obvious roles but private practitioners and veterinary specialists in disciplines like epidemiology, microbiology and pathology have crucial but less well recognised roles. They have roles in 'peace time' in surveillance and early detection of disease, particularly emergency animal diseases (EADs). Practitioners are utilised increasingly in EAD responses. They need training to perform these roles and the AVA is a strong supporter of the Australian Veterinary Reserve and related measures – 'just in time' training alone does not provide trained personnel. Private practitioners have played major roles in recent outbreaks here and overseas.

It is necessary that the legislation facilitates the addressing of risk in biosecurity operations. Some years ago Wilcox J, in ruling on the legality of seized imported pigeons and in-contact birds, expressed the view that the interpretation of 'is or is likely to be infected...' should be that there is a greater than 50% chance of the birds being infected. Biosecurity operations must be able to address low levels of risk of contamination or infection of goods. It must be made clear that the probability of the animals or plants being contaminated or infected does not have to be assessed objectively or quantitatively, but can be assessed by examination of the circumstances under which they come under suspicion.

Some states have second level quarantine requirements (for example, Tasmania with salmon and apples), and it is not clear how this will be transparently managed under the Bills. The Technical Barriers to Trade and Sanitary and Phytosanitary Agreements of the World Trade Organisation have certain requirements in relation to second level restrictions. In essence this means that states and territories can only limit entry of imported products into their jurisdictions if the same restrictions are applied to the same products (or products of similar risk) produced in Australia. Important disease control issues may be involved and such restrictions may be justified if they are necessary to maintain the disease status of the state or territory jurisdiction.

The AVA notes that biosecurity zones are defined differently from those of AUSVETPLAN and those of the World Organisation for Animal Health (OIE). We note that they are not just for disease control purposes but are designed to assist in control of movement of goods that are under biosecurity control. The AVA believes that it must be made absolutely clear how these zones will be employed, especially during a disease outbreak. They must form a seamless link with state and territory legislation. Any confusion of jurisdiction or responsibility could be disastrous in the time-critical environment of an outbreak.

In disease control, 'zoning' is only one element of risk and disease management. Vaccination and slaughter may be employed for some diseases. It will be essential for any biosecurity zones established under this legislation to integrate seamlessly with AUSVETPLAN, AQUAVETPLAN and equivalent plant control plans as well as state and territory disease control measures. This may be covered in subsidiary legislation or regulations but needs to be analysed thoroughly and authorised in the Act.

Requirements for personnel decontamination in Part 4, Division 2, Subdivision B, describe the use of protective clothing and equipment for minimising potential pests from emerging, establishing themselves or spreading in the premises. The AVA believes that the Bill should be explicit about powers to require decontamination of personnel. There is a link to Chapter 11 but personnel decontamination is essential

in the control of outbreaks of diseases like equine influenza or FMD. It is important enough to warrant specific mention in the main body of the text alongside protective clothing and equipment.

Chapter 7 – Approved arrangements

The *Quarantine Act 1908* has provided effective biosecurity for a long time and government is directly responsible for the outcome. We recognise that the move to risk-based approaches is designed to use resources more efficiently, addressing the areas of greatest risk and facilitating the entry of goods into Australia. However, failure of biosecurity safeguards can have disastrous consequences. Evidence-based approaches rely on evidence that the animal or good has undergone a test or other examination to demonstrate its safety. Risk-based approaches rely on information, assumptions, statistics and judgments. It is difficult for the AVA to determine whether adequate information systems are available on which to base this approach and veterinarians would be extremely concerned if new arrangements resulted in lower protections against animal diseases. Auditing, monitoring and evaluation of outcomes can inform policy and operational approaches and should be provided for in the legislation.

Failure of some measures in New Zealand has led to calls for a return to 100% x-ray checking of baggage arriving at airports, sniffer dogs at all airports and increases in biosecurity staff numbers. This follows serious losses to the kiwifruit, potato, tamarillo and beekeeping industries due to biosecurity breaches that have allowed the entry of diseases and pests. Some industries are concerned that the 'lower-cost' biosecurity model and shifting of biosecurity policy settings from risk 'prevention' to risk 'management' has gone too far. The AVA would not like to see similar breakdowns in biosecurity as a result of the approved arrangement system, or indeed any other changes resulting from the new legislation.

As we understand, in the proposed approved arrangement system, non-government entities will undertake biosecurity measures on behalf of the government. The government will be responsible for ensuring that the private entity complies with its approved arrangement.

The AVA believes that the government must provide biosecurity outcomes and that this involves monitoring and verification of the outcome, not just of the process. The Biosecurity Bills must empower the government to assess and enforce these newer approaches and to revert to evidence-based systems where necessary.

Chapter 8 – Emergency provisions

The period during which a Biosecurity Order is in force needs to be clear as does the authority of the Director of Biosecurity to vary a Biosecurity Control Order.

The period of enforcement for Biosecurity Control Orders must be clear and more explicit so as to avoid confusion and potential contest in the event of a high risk scenario.

The AVA believes that it must be clear as to how some parts of this and other chapters relate to corporations as distinct from individuals. This may apply to matters such as the occupier of premises, those to whom orders are given, and the responsibility to act or provide assistance. In general, penalties are much higher for corporations than for individuals. We are not able to locate this concept in the Bills.

Inspector-General of Biosecurity Bill

The Bill requires the Inspector-General to develop a schedule of reviews and to consult with the Director of Biosecurity on the schedule. Given that the position was created to address failure of biosecurity and failure of audit, the AVA suggests that the Inspector-General should have powers to make unannounced reviews and visits to facilities without reference to the Director of Biosecurity if required.

If the Inspector-General's role is designed to be similar to that of an ombudsman (as described in the Beale Review) the public must be able to refer matters directly to the Inspector-General.

*The Australian Veterinary Association
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