



Customs Brokers and Forwarders Council of Australia Inc.

COMMENTARY

Inquiry into the Biosecurity Bill 2014 and
related bills

January 2015

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1. EXECUTIVE SUMMARY

The Customs Brokers and Forwarders Council of Australia Inc. (CBFCA) welcomes the *Inquiry into the Biosecurity Bill 2014 and related bills* (the Bill). The CBFCA has a long history in working with the Department of Agriculture (the Department) on biosecurity policy, process and on the application of fees, charges and taxes as part of Government philosophy on cost recovery or fee-for-service arrangements.

The CBFCA is of the view that Australia's biosecurity system must be underpinned by a modern and effective regulatory framework. Currently, biosecurity is managed under the Quarantine Act 1908 (the Act) and related Regulations. The CBFCA notes (as does the Bill) that Australia's biosecurity risks have changed significantly in the last decade with shifting global demands, growing passenger and trade volumes and increasing imports from a diversified number of countries, with these variants contributing to a new and varying biosecurity focus.

Progressive amendments to the Act have contributed to complex legislation which is difficult to interpret and contains overlapping provisions and powers.

The Bill delivers an outcome focused legislative intent with key principles of minimising regulatory impact while achieving the best biosecurity outcome. It is an industry expectation that the Bill will cut red tape and reduces the regulatory burden on compliant businesses which interact with Australia's biosecurity system. The Bill is seen as providing a strong regulatory framework to enable the management of biosecurity risks in a responsive manner, to enhance Australia's capacity to manage biosecurity risks into the future in partnership with industry and ensures Australia remains competitive in the international trade environment.

The CBFCA Commentary specifically addresses issues which impact on service providers in international trade logistics and supply chain management. These are:

- *Approved arrangements*
- *Compliance and Enforcement - Strict liability offences*
- *Cost Recovery*

2. INTRODUCTION

2.1 Customs Brokers and Forwarders Council of Australia Inc.

The CBFCA is the peak industry association representing service providers in international trade logistics, border compliance and supply chain

management. The CBFCA represents its members and industry in a diverse spectrum of domestic and international trade committees, forums and discussion groups which focus on border compliance which includes biosecurity, customs and transport security.

The CBFCA participated as a member of the Industry Legislation Working Group in the consultation process leading to the drafting of the new legislation. It therefore has an intimate knowledge of the legislative intent, regulatory policy and the process required as to cost efficiency and cost effective legislation implementation.

Further details of the CBFCA, its credentials and its involvement in the movement and clearance of goods into and out of Australia are available at www.cbfc.com.au

2.2 Contact Details

All enquiries and responses may be directed as follows:

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3. BACKGROUND

The CBFCA, as previously commented, represents service providers in the international trade logistics and supply chain management industry, in particular those service providers who undertake border clearance activities through the Australian Customs and Border Protection Service (ACBPS) and Department of Agriculture (the Department); these being licensed individual customs brokers (operating as sole traders or in partnership) or licensed corporate customs brokerages where the individual licensed customs broker is a nominee for that corporate entity. Licensed customs brokers are accredited by the Department under the Broker Accreditation Scheme to undertake in co-regulatory arrangement documentation assessment activities for non-commodities and commodities.

In this capacity, the CBFCA has provided commentary to a variety of Government and regulatory inquiries as to policy, equity, compliance, cost recovery and process improvement on biosecurity matters.

The CBFCA is also an active member of the Department of Agriculture Cargo Consultative Committee (DCCC) and works with the Department on a variety of collegiate biosecurity process outcomes.

4. NEW BIOSECURITY BILL

The CBFCA actively supports the proposed new biosecurity legislation which will create a responsive flexible operating environment, to give effect to the key aspects of:

- effectively managing risk
- improving productivity
- strengthening partnerships
- sound administration and,
- transparency

From a CBFCA perspective the new legislation will provide for better management of the biosecurity risks of animal, plants, pests and diseases entering in Australia through the international trade pathway.

The proposed biosecurity legislation will benefit service providers in international trade by:

- *reducing complexity, providing certainty, making it easier for the Commonwealth to regulate and for stakeholders to understand their obligations (i.e. by removing duplicative provisions and by clarifying regulatory powers)*
- *reducing regulatory burden for compliant business persons and targeting resources to the areas of highest risk (i.e. whole of supply chain, approved arrangements) and improving service delivery.*

5. APPROVED ARRANGEMENTS

The concept of co regulatory framework has been in place in certain biosecurity activities and was noted in the Quarantine and Exports Advisory Council (QEAC) submission to the Beale Review, where it was stated:

“The responsibility of managing risk should not be a sole AQIS responsibility but be spread across corporate Australia. There should be a legislative mechanism to ensure corporate

Australia and importers take responsibility for managing the risk by ensuring appropriate systems and procedures are in place.”

The expected increase in the volume of goods, aircraft, vessels and people entering and exiting Australia is a burden the Commonwealth will clearly not be able to manage with existing processes and resources. It is therefore in the Commonwealth’s interests to seek out more productive working relationships with industry to share the responsibility for managing Australia’s biosecurity risks.

The CBFCA as a member of QEAC at that time strongly supported, and continues to support, the co-regulatory arrangement.

Therefore the CBFCA supports and welcomes the proposed changes in Section 66B of the Act which:

“allows the Director to enter into a compliance agreement with an industry participant, which requires the participant to perform specific tasks in relation to goods that are subject to quarantine in an agreed manner.”

The CBFCA sees that the proposed biosecurity legislation will enable a variety of existing Compliance Agreements and other arrangements to be merged into a single Approved Arrangements scheme, covering a variety of places, process and other activities undertaken to manage biosecurity risks.

Industry members will benefit from the streamlined process of making a single application to enter into one arrangement with the Commonwealth that covers all of their business locations and activities. This removes the current complexity, duplication and reduces the unnecessary regulatory burden experienced by industry. It will allow the Commonwealth to better recognise business practices which meet Australia’s biosecurity requirements through appropriate processes.

By encouraging more industry members to share the responsibilities for managing biosecurity risks Approved Arrangements will also reduce such risk.

6. COMPLIANCE AND ENFORCEMENT

The Bill introduces a number of new regulatory tools to manage compliance and enforcement, which are designed to encourage clients to voluntarily comply with biosecurity requirements.

The Bill contains infringement notices, civil penalties, enforceable undertakings and criminal sanctions. In addition, new powers have been provided for compliance such as warrants that allow biosecurity officers to enter premises in order to manage

biosecurity risk.

Strict liability offences

The CBFCA notes that the Bill contains infringement notices and civil penalties, these being part of the Government's philosophy on compliance enforcement. Industry has been subject to such arrangements under the existing Australian Customs and Border Protection Infringement Notices Scheme.

Introduction of strict liability offences to biosecurity compliance is a change in the Departments' compliance posture. It is important to note that service providers (licensed customs brokers in particular) are accredited by the Department under the Non-Commodity for Containerised Cargo Clearance (NCCC) Accreditation Course. Such accredited persons are employed by the business entity that holds a Compliance Arrangement with the Department. These accredited persons are responsible for documentation assessment on behalf of the cargo owner (importer), in facilitating biosecurity border clearance activities.

As to the new strict liability provisions it will be important (as to the responsible person listed under future Approved Arrangement) to ensure such persons are aware of obligations related to documentation assessment, clearance and movement of cargo subject to biosecurity risks, as under an Approved Arrangement it is the business entity which will be the entity which will bear any strict liability offence by the employee under *vicarious liability* and this issue will impact on business insurance requirements.

Division 4—Civil penalty provisions for false and misleading information or documents

Clause 532 Civil penalty provision for false or misleading information

Clause 533 Civil penalty provision for false or misleading documents

These Clauses provide that a person is liable to a maximum civil penalty of 60 penalty units if a person knowingly provides false and misleading information or documents. The person is also liable to the same civil penalty if he or she omits any matter or thing without which the information provided becomes misleading.

In such cases as need exists to ensure that where the cargo owner provides false documentation or information (later deemed misleading) to the licensed customs broker/brokerage then the responsible person for compliance failure is the cargo owner not the customs broker who is acting in good faith as to the information and documentation provided to facilitate biosecurity border clearance.

The CBFCA is of the view that the Regulations or Departmental public policy on this

aspect should clearly define the responsible parties and the obligations under Approved Arrangements.

7. COST RECOVERY

The CBFCA acknowledges the policy position of Government on cost recovery or fee-for-service principles notwithstanding that service delivery in a monopolistic regulatory arrangement should be budget funded.

It should be noted however, that as to any fees, charge or tax as to biosecurity border or compliance requirements these are, in the main, not to the account of the service provider, or the importer of record, these are incorporated, in and transferred through, the supply chain to the end user as reflected in the end sale price. In addition, where import commodities are not consumer durables and are inputs to manufacture, such costs impact on Australia's economic performance and export trade related activity.

In the implementation of any cost recovery activity, the CBFCA sees that the strict adherence to cost recovery principles, in particular, those as set out in the Australian Government Cost Recovery Guidelines (CRG), Department of Finance, (the Guidelines) is not only desirable but mandatory to ensure, that the delivery of service to users (particularly as such services are mandated and provided only by Government) is equitable, cost efficient and cost-effective.

The CBFCA's position on Government cost recovery is that these arrangements must be equitable, transparent, cost efficient and cost effective. The failure of regulatory agencies to enter into, or seek consultation with industry, as to cost recovery to benefit all parties, either business or regulatory is well documented. The recent *Joint Review of Border Fees, Charges and Taxes 17 September 2014* is an example of a review which does not give effect to the CRG.

To determine whether activities and services provided by the Department should be a cost recovered or deemed community service obligation, the issue which needs identification is what service(s) is to be cost recovered in accordance with Government policy. What constitutes the service and its respective component(s) needs to be determined by way of a matrix of service/positions/costs. Such transparency and information provided by the Department should give effect to collaboration with industry to develop a sustainable financial model. It should be noted that this is being implemented in the Department's current Review of Changing Guidelines.