

Department of Primary Industries, Parks, Water & Environment
BIOSECURITY AND PRODUCT INTEGRITY DIVISION



17 December 2012

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

Dear Mr Palethorpe

Biosecurity Bill 2012 and the Inspector-General of Biosecurity Bill 2012

The Tasmanian Department of Primary Industries, Parks, Water & Environment (DPIPWE) appreciates the opportunity to comment on the draft Biosecurity Bill which is before the Senate and now being considered by a Senate Committee of Inquiry.

The Bill was reviewed from the perspective of State biosecurity by the Tasmanian Biosecurity Committee (TBC). The TBC is responsible for coordinating a whole-of-government strategic approach to managing Tasmania's biosecurity. The TBC's role is reviewing and maintaining Tasmania's Biosecurity Policy and Strategy to ensure that it remains aligned with current practice at the international and national level.

Enclosed are the Tasmanian Government's key concerns with some of the provisions in the draft Bill. These are expressed under each chapter heading.

Yours sincerely

Lloyd Klumpp
General Manager, Biosecurity and Product Integrity Division
on behalf of Tasmanian Biosecurity Committee

Introduction

It is noted that the legislation is largely enabling in nature and that considerable detail is to be provided in the regulations and operational documents. In many areas this makes it difficult to comment on how the Australian biosecurity system will operate under this Bill.

Overall though, DPIPWE acknowledges that the Bill supports the reforms proposed in the Beale Review and promoted by the Tasmanian Biosecurity Strategy. We believe it is contemporary in nature with a positive improvement on the *Quarantine Act 1907*.

Notwithstanding the above, the Tasmanian Government does have some key concerns with some of the provisions in the draft Bill. These are expressed under the following chapter headings.

Chapter 1: Preliminary

It is DPIPWE's view that the inclusion of the Appropriate Level of Protection (ALOP) statement in legislation is significant. Previously it sat outside of legislation as part of Australia's agreement as a World Trade Organization (WTO) member. It seems unusual that a government would choose to embed the policy position with reference to risk in legislation. While the Tasmanian Government is supportive of the words used, we have previously proposed that the Australian ALOP statement should be more detailed and less open to interpretation.

Chapter 3: Managing biosecurity risks: goods

Covering the field

This chapter contains a provision for the over-riding of State requirements in MG198 Exclusion of State and Territory Laws. The explanatory notes describe the intent of this provision to be that States and Territories will not be able to impose measures that are more restrictive than those imposed by the Commonwealth.

Unless regional differences in biosecurity status are factored into national import requirements, this legislation will effectively undermine enhanced biosecurity status in areas where it currently exists. It would also potentially provide overseas imported goods with easier access to areas of enhanced biosecurity status than equivalent domestic product from another part of the country.

The explanatory notes supporting the Bill state that the national risk assessment process, will take into account regional differences in pest and disease status. However, at this time, there is no clear understanding or agreement on how this will be achieved. It is important that the Guidelines to be published give confidence that regional risk, including both likelihood and regional consequences of an incursion, is given due consideration. DPIPWE doesn't support the bill unless clear and acceptable guidelines are set and published.

BIRA processes

Australia officially aims to reduce biosecurity risks to “a very low level, but not to zero”. To achieve this, it is important that import decisions are transparent and reviewable and made by experts who are independent of trade promotion and political influence.

DPIPWE is concerned that in the case of differing assessments of the scientific argument there is no independent decision making process. The Commonwealth biosecurity agency is to be part of the Department of Agriculture, Fisheries and Forestry, and all import decisions are to be made by the Director of Biosecurity who is also the Departmental Secretary responsible for trade and market access. The Beale review recommended that “Biosecurity Import Policy Determinations should be made by an expert and independent National Biosecurity Commission”. Other options might be retention of the Eminent Scientists Group, or empowerment of the Inspector General of Biosecurity, to assess the merits or science of a BIRA decision.

Chapter 5: Ballast water and sediment

Tasmania supports a single national framework for the management of ballast water.

Chapter 6: Managing biosecurity risks: monitoring, control and response

States and Territories have been calling for greater Commonwealth responsibility for biosecurity in some areas for some time (e.g. incursions as a result of border failure such as imported furniture/borers and post border monitoring of cattle imported from BSE affected countries).

DPIPWE notes that it is necessary to establish agreed areas of responsibility and powers across jurisdictions. Clarification is needed as to how State emergency management legislation and arrangements interact with the Commonwealth system.

Chapter 7: Approved Arrangements

DPIPWE notes that this is another significant shift from the *Quarantine Act* and enables the recognition of ‘approved arrangements’ developed by industry as equivalent to biosecurity regulation. We believe this provides opportunities for regulatory burden reduction, decreased overall costs to industry and government and streamlining of systems. However, detail as to how the system will be implemented and overseen is important to ensure confidence that robust and effective biosecurity control is not compromised.

Chapter 8: Biosecurity emergencies and Human biosecurity emergencies

DPIPWE strongly supports the broadening of Commonwealth emergency powers in order to fill gaps in the system and provide consistency in cross-jurisdictional incidents. Once again, however, more detail is needed for all jurisdictions to have a clear understanding of roles, responsibilities and how this legislation operates beside State legislation and emergency arrangements.

Chapters 12: Governance and officials

DPIPWE's major concern about the governance of the National Biosecurity System has been expressed in relation to chapter 3 with regard to Import Policy decision making.

Chapters 13: Miscellaneous

This chapter lists the reviewable decisions across the legislation. There appears to be an imbalance, as a result of the lack of process for independent review of the merit or science of a BIRA, in that a person seeking to import goods is able to request a review of a decision taken by the Director of Biosecurity to refuse or vary a permit to import those goods and yet the decision to allow an import with or without conditions is *not* a reviewable decision.

The explanatory notes for this chapter outline provisions for cost recovery. No such provisions are evident in the exposure draft provided. It can only be assumed that those provisions will be described in the regulations enabled by PM425. Clearly, these provisions are of major interest to all biosecurity stakeholders.

Inspector-General of Biosecurity Bill

Alongside the Biosecurity Bill sits the Inspector-General of Biosecurity Bill. The Inspector General position goes part way to addressing Beale's recommendation of a statutory biosecurity authority. The Inspector General is independent of the Department or the Director of Biosecurity and has independent powers. However, as described in relation to Chapter 3, the review powers of the Inspector General provide only for review of processes and not the merit of, or science underpinning decisions by the Director of Biosecurity.

DPIPWE's preferred option to addressing Beale's recommendation is a National Biosecurity Commission. However, failing the implementation of an independent commission, we believe the Inspector General's role should be expanded to include review of contentious BIRA decisions.