

Australian Greens' Additional Comments

Introduction

1.1 Australian agriculture in particular is dependent on high quality biosecurity arrangements. After climate change, the introduction of pests and diseases is the biggest threat that this sector faces. Modernising and consolidating the arrangements that have developed over the past 100 years is a positive step. However, the Australian Greens are deeply concerned that the Biosecurity Bill 2014 does not sufficiently safeguard our environment, industry and community from biosecurity risks or provide the right framework for ensuring scientific, risk-based assessments are not undermined by other considerations such as international trade agreements.

1.2 The recommendations made in the majority committee report go some way to addressing the issues that have been identified by submitters, but they do not go far enough. In particular, the recommendations 2,3,4 and 5 help establish how the Director of Biosecurity can be more accountable in their assessment processes but does not ensure that scientific and industry expertise nor regional variations will be considered. This will be discussed further in these additional comments, as well as the role of the Director of Biosecurity and the Inspector General, environmental biosecurity, and the subordinate legislation.

Building on the 2012 Bill

1.3 The 2014 Bill builds on the 2012 version, and we welcome the improvements. However some substantial issues have still not been addressed. Some of the key areas of concern identified during the 2012 inquiry process that are still not addressed in the 2014 Bill include:

- The failure of the Bill to take account of regional differences
- The lack of legislative arrangements that ensure that the Eminent Scientist Group and other independent industry and scientific advisory channels are always included in biosecurity processes
- The failure to guarantee the independence of the Inspector General from the Director of Biosecurity
- The failure to provide a right of appeal against Director of Biosecurity's decisions

1.4 For this reason, this report will also draw on evidence from the previous inquiry in demonstrating the gaps that still need to be addressed through amendments to the Bill.

Beale review

1.5 Unfortunately, the architecture of this Bill falls short of the highly regarded Beale Review and fails to fully capitalise on the broad support that the Review generated.

1.6 From the perspective of the Australian Greens, the key recommendation that has not been implemented is the creation of a separate Biosecurity Agency.

1.7 Ms Mellor, Deputy Secretary of the Department of Agriculture, Fisheries and Forestry, told the committee that:

It is government's decision to not pursue the recommendation of Beale to establish a separate biosecurity authority and commission, but to maintain the management of biosecurity under this act in the Department of Agriculture, Fisheries and Forestry in concert with the Department of Health and Ageing.¹

1.8 The consequence of this decision is significant conflict of interest, for both the Director of Biosecurity and the Minister. For the Minister especially there is a significant tension in being directly responsible for both the Director of Biosecurity and the Inspector-General. Our biosecurity response should be an arm's-length process and not exposed to politicised decisions.

1.9 The legislation also leaves too much of the biosecurity review process at the discretion of the Director and the Inspector General and, in doing so, fails to bring transparency into the BIRA processes or to encourage industry or community confidence. In the words of Mr Prince, CEO of Nursery and Garden Industry Australia:

It was a key conclusion that the Beale review came up with—having someone who was independent from the influence of either the trade or the department of agriculture. This legislation is huge, when you are looking at animals, humans, plants and environments. It is a very over-encompassing piece of legislation. For it to sit, or be charged, under the department of agriculture, which is very focused on primary industry, was one of the issues that was raised in Beale. You had Biosecurity Australian and AQIS—two different bodies—almost at loggerheads with each other or having different processes. So an independent body that has feedback from those other three ministers would certainly make sense and strengthen the whole process.²

1.10 The Australian Greens support recommendations 1 through 5 in the majority report, which outline ways in which transparency and rights to appeal can be integrated into the legislation, but we would much prefer to have actually established a separate Biosecurity Agency, with a Director that is not also the head of Agriculture.

1.11 While the legislation has revised to clarify that the Director of Biosecurity must have regard to the objectives of the Act, it is impossible to understand how this will work in practise. As stated by Mr Andrew Cox, President of the Invasive Species Council:

1 Ms Rona Mellor, Deputy Secretary, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 8 February 2013, p.13.

2 Mr Robert Prince, Chief Executive Officer, Nursery and Garden Industry Australia, *Committee Hansard*, 9 May 2013, p.5.

An average person would think, 'How could they possibly not take into account the other things that are a part of their responsibilities?' It is one person making a decision, who holds multiple roles. It is a simple conflict.³

1.12 One of the ways that this conflict manifests is through the impact of international trade agreements on our biosecurity arrangements. While the Australian Greens support the desire of the Department of Agriculture to maximise trade between countries, we remain concerned that this responsibility has an undue influence on the biosecurity arrangements.

1.13 Dr Booth, Policy Officer at the Invasive Species Council, noted that:

I think the industry bodies come up with many examples of where they think there has been an influence of trade on decisions. We have to—and Bill emphasised this—reduce the risk of that happening. That should be for whoever is running biosecurity. So independence does that. It takes it out of a department that has a strong trade focus, so perceived and real conflicts of interest are avoided in that sense.⁴

1.14 Furthermore, negotiations such as those taking place around the TPP-FTA, which are shrouded in secrecy, do not inspire confidence.

1.15 The Australian Greens recommend creating a separate Biosecurity Agency, with a Director that is separate from the Department of Agriculture Secretary.

Independence of the Inspector-General of Biosecurity

1.16 Similarly, it is our preference that the Inspector-General be a statutory position.

1.17 The decision to not create a statutory Inspector-General position is the most significant change between the 2012 and 2014 versions of the Bill. Dropping of the Inspector-General of Biosecurity Bill proposed in 2012 is very disappointing

1.18 The 2014 Bill instead provides powers to the Minister of Agriculture to review biosecurity performance. Ms Langford, from the Department of Agriculture, explained that '[t]he intention is to delegate those to the Inspector-General of Biosecurity to allow a review of the system to happen.'⁵

1.19 However, even if the powers are delegated, this is a backward step from the arrangement proposed in 2012. The Invasive Species submission outlines why it is not suitable for the Minister to have this level of control over the process:

3 Mr Andrew Cox, President, Invasive Species Council, *Committee Hansard*, 8 February 2013, p.34.

4 Dr Carol Booth, Policy Officer, Invasive Species Council, *Committee Hansard*, 8 February 2013, p.31.

5 Ms Debbie Langford, Assistant Secretary, Biosecurity Regulation and Reform Policy Branch, Service Delivery Division Service Delivery Division, Department of Agriculture *Committee Hansard*, 11 February 2015, p.10.

The Minister for Agriculture has a clear conflict of interest as both Minister administering biosecurity legislation and person responsible for reviewing biosecurity performance. The areas subject to review are likely to be influenced by political considerations, and matters that could embarrass the government of the day are likely to be avoided. The risk of this would be substantially reduced and the public would have greater trust in the reviews if they were initiated and conducted by an independent statutory officer.⁶

1.20 The majority committee report calls for the findings conducted by the Inspector General (or any other person delegated this authority) to be made public. This goes some way to addressing the problem, but it does not prevent the role from being substantially re-shaped in the future without Parliamentary oversight.

1.21 The Australian Greens recommend enshrining the independence of the Inspector-General in legislation by re-introducing the Inspector-General of Biosecurity Bill 2012.

Regulations

1.22 The Australian Greens are also concerned that this framework legislation leaves a significant amount of detail about the practical effects of the reform to subordinate legislation, which has not been made available to the committee.

1.23 One of the most significant impacts of this was the failure to give the committee a clear answer on the role of the Eminent Scientists Group.

1.24 Dr Radcliffe explained that there is some risk that if a group of experts is not clearly established from the outset, then:

...in some technical areas there is a very small pool of expertise in Australia from which to choose, and it may prove difficult to find consultants who are not already conflicted through having been involved in the production of the original BIRA or in preparing responses on behalf of stakeholders in developing that process. Whilst there is provision for support staff in the Office of the Inspector-General, I suspect it is unlikely to be economically feasible to encompass staff numbers with sufficient skills and experience to cover all possible technical areas across a whole range of commodities.⁷

1.25 When combined with a lack of transparency or independence, the lack of clarity about the role of external expertise is concerning.

1.26 The Australian Greens recommend that the Bill not be passed until draft regulations are provided to the committee and industry stakeholders for review.

1.27 If regulations cannot be presented, then the Government should make clearer commitments around consultation and the inclusion of external experts.

6 Invasive Species Council, *Submission 16*, p.3.

7 Dr John Clive Radcliffe, Chairman, Eminent Scientists Group, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 8 February 2013, p.38

1.28 We recognise that the majority committee report seeks for the language to be improved to ensure that scientific expertise must be sought during an assessment process and support this.

1.29 The Australian Greens believe that we should go one step further than the majority report and recommend that the consultative arrangements such as the Eminent Scientist Group be established in the legislation itself.

Environment

1.30 The environment is subservient to agriculture in this legislation.

1.31 Under the current arrangements in the *Quarantine Act 1908*, there is a requirement for a Director of Quarantine to consult with the Environment Minister over decisions that may involve a significant risk of environmental harm.⁸ This requirement is not carried through into the new legislative arrangements.

1.32 One consequence of this is that the Director of Biosecurity is not obligated to include officers from the Department of Environment. The other consequence was outlined by Mr Cox, from Invasive Species Council, who said:

From a practical point of view, without a statutory basis, when those subjects are competing for priorities, [the Environment Department] cannot justify spending any time or any resources on that issue.⁹

1.33 To overcome these problems, the Australian Greens recommend that the Secretary of the Department of Environment or the Environment Minister (as appropriate) have designated roles in decision-making and policy direction on important environmental biosecurity issues.

1.34 However, the Invasive Species Council noted that it is not enough to just include environmental biosecurity in the legislation—there needs to be a corresponding commitment from Government to provide resources to deliver the environmental components of the biosecurity legislation. According to Mr Cox:

One important institutional change that needs to accompany this is setting up a body like Plant Health Australia and Animal Health Australia, which we have called 'Environmental Health Australia'. Those two other industry-based bodies do great work, and without the foresight, preparation and risk work that needs to be done on behalf of the environment, you have not got a good biosecurity system for the environment. We are missing out. The government is not investing in that, but they are investing in that for the industry.¹⁰

1.35 The consequence of not having a government institution that focuses on environmental biosecurity was then outline by Mr Cox, who went on to say:

8 *Quarantine Act 1908*, section 11C.

9 Mr Andrew Cox, President, Invasive Species Council, *Committee Hansard*, 8 February 2013, p.31.

10 Mr Andrew Cox, President, Invasive Species Council, *Committee Hansard*, 8 February 2013, p.30.

With myrtle rust—and I will not talk about the whole sorry saga of myrtle rust which is now in our country—it is one thing that highlights the role of the community. Because environmental threats are largely in the public interest, generally there is no-one willing to stump up the money to deal with them except for government. But when government takes it on, the current system does not properly involve the community that also shares that public interest. So with myrtle rust, there was no consultation with the conservation community or any part of the community beyond the government in the responses. Whereas, when an ordinary industry based risk happens, the industry is actively involved right in the centre of the response. The decisions were made quickly but some wrong decisions were made so that, again, the community was totally detached and not involved at all. When the environmental response agreement was put in place early last year we were not consulted. They have just recently amended it in the last year and we were not consulted. A partnership is about working with us—we have expertise, though we may not always agree. Again, I think this bill needs to acknowledge the importance of the role of the community and actually codify it and make sure, again, that the environment is also not forgotten.¹¹

1.36 In order to ensure that environmental biosecurity is prioritised at all levels of government, the Australian Green recommend establishing and resourcing an entity that can act as the key body for environment health in the same manner as Plant Health Australia and Animal Health Australia, and use this body to establish a partnership between community, governments and environmental businesses in order to deliver high priority policy and planning issues in environmental biosecurity.

Definitions

1.37 There are a number of definitions in the Bill that could be strengthened or clarified.

1.38 Invasive Species Council argues that the definition of ‘environment’ in the Bill (taken from the EPBC Act) is too broad as it can be taken to include invasive species and it does not distinguish between biota indigenous and non-indigenous biota and neglects ecological processes.¹²

11 Mr Andrew Cox, President, Invasive Species Council, *Committee Hansard*, 8 February 2013, p.35.

12 Invasive Species Council, *Submission 16*, p.8.

1.39 The Australian Greens recommend changing the definition of 'environment' in Chapter 1, Part 2, Section 9 of the Biosecurity Bill, so that 'environment' includes:

- **Australian biodiversity - the variety of life indigenous to Australia and her external territories, encompassing ecosystem, species and genetic diversity,**
- **ecological processes - the interactions and connections between living and non-living systems, including movements of energy, nutrients and species, and**
- **natural and physical resources.**

1.40 Similarly, the definition of 'biosecurity risk' is not sufficiently broad enough and could include a reference to regional variations.

1.41 The Australian Greens recommend broadening the definition of 'biosecurity risk' in Chapter 1, Part 2, Section 9 to include consideration of the following matters:

- **recognise changes through time, to require that risks are assessed over an ecologically relevant time frame and take account of climate change;**
- **include the likelihood of new genotypes of a disease or pest combining with others to exacerbate the potential for the disease or pest to cause harm or to cause greater harm than existing genotypes; and**
- **recognise regional differences and different levels of biodiversity (ranging from ecosystem to genetic level).**

The Precautionary Principle

1.42 The Australian Greens believe that there should be a legislative requirement to apply the precautionary principle in decision-making under the Biosecurity Act.

1.43 This could include adding a note to the 'Appropriate level of protection' in Chapter 1, Part 1, Section 5 which specifies that if there is insufficient evidence to determine biosecurity risk, or if the available evidence is inconclusive in that regard, then the precautionary principle will apply.

1.44 For an example as to how this could operate in practice, we can refer to the Queensland *Biosecurity Act 2014* (Chapter 1, Part 1, Section 5(c)) which uses the precautionary principle as a trigger for action through the following clause in Chapter 1, Part 1, Section 5(c):

including in risk-based decision-making under this Act the principle that lack of full scientific certainty should not be used as a reason to postpone

taking action to prevent a biosecurity event or to postpone a response to a biosecurity risk.¹³

1.45 The Australian Greens recommend that the Bill be amended to include reference to the precautionary principle.

Biosecurity Zones

1.46 The legislation provides a range of biosecurity zones that can be established by the Director of Biosecurity. However, there is no specific framework for creating zones in high value conservation areas for the purpose of implementing biosecurity measures.

1.47 The submission from Invasive Species Council identifies three situations in which such zones would be useful:

Protecting islands from re-invasion by eradicated species: Australia has recently been investing substantial resources in eradicating invasive species from islands – for example, cats, rabbits and rats from Macquarie Island and goats, pigs, cats and rats from Lord Howe Island. Biosecurity zones could be established to provide the basis for implementing regulations and protocols to limit the risks of re-invasion or new incursions.

Protecting seabird nesting islands: Many islands important for seabirds are at great risk of accidental (or sometimes deliberate) release of invasive predators, such as rats and mice, or weeds or ants. Biosecurity zones could be declared to provide a nationally consistent basis for regulating activities that pose biosecurity risk such as visitation by fishing boats or yachts.

Buffering high value areas from biosecurity risk: Although managers (whether government or private) of high value conservation areas have the lawful capacity to manage invasive species on their land, they are usually powerless to manage activities or monitor pests or diseases in adjacent areas that threaten their land. Conservation biosecurity zones could be used as the basis for managing or monitoring buffer areas to provide protection for high value areas at risk.¹⁴

1.48 These zones could be declared by the Secretary of the Environment Department on advice by a scientific committee (such as the Threatened Species Scientific Committee), and provide the framework within which biosecurity arrangements are negotiated through bilateral agreements with state and territory governments.

1.49 The Australian Greens recommend establishing a category of biosecurity zone for high value conservation areas with high biosecurity risks known as ‘conservation biosecurity zones’, as the basis for implementing biosecurity measures, plans and monitoring.

13 *Biosecurity Act 2014* (Qld), Chapter 1, Part 1, section 5(c).

14 Invasive Species Council, *Submission 16*, p.52.

Reporting

1.50 The majority committee proposes that reports that are generated by the Inspector-General should be tabled in Parliament.

1.51 The Australian Greens believe that the reporting requirements for this legislation should go further and recommend that there should be a requirement to table biosecurity outlook report every two years.

Regional variations

1.52 Regional variations are significant in Australia and should be accounted for in our biosecurity arrangements.

1.53 The 2014 legislation has improved how Biosecurity Import Risk Analyses (BIRAs) can take account of the regional variations. However, the substantive information will be contained in regulation.

1.54 The majority committee view is that the Department has made sufficient modifications to the Bill and the majority report makes no further recommendations but the Australian Greens remain unconvinced that simply giving the power to consider regional variations will deliver the best result.

1.55 A WA perspective on this issue was presented by Mr Delane, who told the committee:

We all have experience on this, and if it is not in the legislation then it is more changeable in regulations, and if it is a matter of policy then it is not only changeable by government and the department of the day but it is open to interpretation at an operational level as well. We do appreciate the challenges for the Commonwealth in dealing with different measures—goods coming into Fremantle, to Western Australia and so on versus eastern Australia, and having officers applying different measures here from elsewhere. We do not see that additional complexity as being a matter of great material for the national authority. We should, through the measures applying international entry points, be trying to protect every part of Australia rather than, if you like, moving quite quickly towards the lowest common denominator for biosecurity status in this nation.¹⁵

1.56 Similarly, in the discussion of ballast water discharge and the management of the marine environment, it was not always clear whether the move to a national approach allowed for regional variations.

1.57 The Australian Greens recommend that the legislation state clearly those regional variations both on land and in the marine environment must be considered in Biosecurity Import Risk Analyses.

15 Mr Robert John Delane, Director General, Department of Agriculture and Food, Western Australia, *Committee Hansard*, 9 April 2013, p.16.

Funding

1.58 The Department has stated that there will be no additional financial resources to support the development of biosecurity arrangements.

1.59 The Australian Greens support the recommendation in the majority committee report that there be more training for biosecurity officers. But again we believe the Government needs to make a clearer commitment to maintaining a high level of biosecurity in Australia.

1.60 The Australian Greens recommend that sufficient funding be allocated by Government to ensure that the arrangements that are proposed under the Bill can be properly implemented.

Conclusion

1.61 The Australian Greens welcome the modernisation of Australia's biosecurity arrangements. We would have preferred that the Bill go further and make the big structural reforms that were recommended in the Beale Review. This would have ensured that the legislation was robust and that the focus is on scientific principles of risk management.

1.62 The Australian Greens support the recommendations in the majority committee report, but also go further in suggesting a range of recommendations to strengthen the Bill.

1.63 The Bill should be amended as per the recommendations in this report before it is passed.

**Senator Rachel Siewert
Australian Greens**