

The Senate

Rural and Regional Affairs
and Transport
Legislation Committee

Biosecurity Bill 2014 [Provisions]

Biosecurity (Consequential Amendments and
Transitional Provisions) Bill 2014 [Provisions]

Quarantine Charges (Imposition–Customs)
Amendment Bill 2014 [Provisions]

Quarantine Charges (Imposition–Excise)
Amendment Bill 2014 [Provisions]

Quarantine Charges (Imposition–General)
Amendment Bill 2014 [Provisions]

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List of recommendations

Recommendation 1

The committee recommends that the findings of reviews conducted under clause 567 of the Biosecurity Bill 2014 be publicly released and reports tabled in Parliament.

Recommendation 2

2.55 The committee recommends that the government ensure that the Biosecurity Regulations state that the Director of Biosecurity must request expert scientific advice when conducting Biosecurity Import Risk Analyses.

Recommendation 3

2.56 The committee recommends that the government ensure the regulations state that the Director of Biosecurity must provide all stakeholders with a reasonable opportunity to comment on each Biosecurity Import Risk Analysis report.

Recommendation 4

2.57 The committee recommends that the Biosecurity Regulations require that the Director of Biosecurity provide reasons for the conclusions reached in each Biosecurity Import Risk Analysis report.

Recommendation 5

2.58 The committee recommends that the government ensure that the Biosecurity Regulations provide a process for internal review if an interested party disagrees with a final Biosecurity Import Risk Analysis report.

Recommendation 6

2.71 The committee recommends that the Department of Agriculture commit all resources necessary to ensure that Approved Arrangements, exemptions and standing permissions arising out of the proposed change in Australia's quarantine zone from 200 nautical miles to 12 nautical miles are in force before the bill, if passed, would commence.

Recommendation 7

2.72 The committee recommends that the Department of Agriculture provide updates to the committee on its progress with developing Approved Arrangements, exemptions and standing permissions arising out of the proposed

change in Australia's quarantine zone from 200 nautical miles to 12 nautical miles.

Recommendation 8

2.74 The committee recommends that a note be added to clause 12 of the Biosecurity Bill 2014 to clearly advise the reader of the legislative basis for the boundaries of Australia's biosecurity zone.

Recommendation 9

2.75 The committee recommends that the explanatory memorandum to the Biosecurity Bill 2014 be amended to clearly outline the legislative basis for the 12 nautical mile quarantine boundary proposed under the Biosecurity Bill 2014.

Recommendation 10

2.85 The committee recommends the Biosecurity Bill 2014 be amended to require that the use of powers to enter and search premises without warrant or consent and to seize or destroy goods without warrant or consent to be reported to the Minister and to Parliament.

Recommendation 11

2.103 The committee recommends that the Department of Agriculture and the Department of Health ensure that advice sheets about the proposed new biosecurity requirements, and related offences, are available and appropriate for people with disabilities and people from non-English speaking backgrounds.

Recommendation 12

2.104 The committee recommends that the Department of Agriculture and the Department of Health develop guidance material to facilitate industry's transition to the proposed new compliance regime.

Recommendation 13

2.134 The committee recommends that the Department of Agriculture continue to consult closely with all relevant stakeholders and ensure that stakeholders are provided sufficient time to consider and respond to proposed regulations.

Recommendation 14

2.139 Subject to the foregoing recommendations, the committee recommends that the Senate pass the Biosecurity Bill 2014 and related bills.

Chapter 1

Introduction

Referral of inquiry

1.1 On 27 November 2014, the Senate referred the Biosecurity Bill 2014 and related bills to the Senate Rural and Regional Affairs and Transport Committee for inquiry and report by 17 March 2015.

1.2 The Biosecurity Bill 2014 (the Biosecurity Bill) would introduce a new regulatory framework for the management of biosecurity risks in Australian territories. The bill would replace the *Quarantine Act 1908*, under which biosecurity is currently managed. This new regulatory framework would be supported by the proposed amendments in the Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014, the Quarantine Charges (Imposition—Customs) Amendment Bill 2014, the Quarantine Charges (Imposition—Excise) Amendment Bill 2014 and the Quarantine Charges (Imposition—General) Amendment Bill 2014.

Background

1.3 In 1908, Parliament passed the Quarantine Act to provide one unified, federal system of quarantine.¹ In the 106 years since its introduction, this national system has been the subject of substantial revision. The Quarantine Act has been amended no fewer than 50 times. As noted in the explanatory memorandum to the Biosecurity Bill, the result is a complex, century-old legislative framework that is 'difficult to interpret and contains overlapping provisions and powers'.²

Recent biosecurity reviews

1.4 Since its inception, Australia's biosecurity system has been subject to several significant reviews. In recent years, these have included a review of the system's capacity to manage the equine influenza outbreak in August 2007. Reporting in April 2008, the review panel, chaired by Commissioner the Hon. Ian Callinan AC, recommended, among other measures, the establishment of the position of the Inspector General of Horse Importation. It was envisaged that the Inspector would act as an external auditor of quarantine premises and the performance of relevant Commonwealth employees.³ The then Government accepted the recommendation, establishing the position of the Inspector General of Horse Importation in

1 Sir William Lyne, Minister for Trade and Customs, *House of Representatives Hansard*, 16 July 1907, p. 504.

2 Biosecurity Bill 2014, Explanatory Memorandum, p. 7.

3 Commissioner the Hon. Ian Callinan AC, *Equine influenza: the August 2007 outbreak in Australia, Reported the equine influenza inquiry*, April 2008, p. xxvii.

September 2008.⁴ The position was subsequently incorporated into the role of the Interim Inspector-General of Biosecurity.⁵

1.5 A further review was undertaken in 2008. The *Review of Australian quarantine and biosecurity*, chaired by Mr Roger Beale AO (the Beale review), concluded Australia's biosecurity system 'is often the envy of other countries'. However, the Beale review also forecast that significant reforms would be required to ensure Australia's biosecurity system remains responsive to changing and increasing biosecurity risks.⁶ As summarised by the Department of Agriculture, the review recommended:

- new biosecurity legislation to replace the *Quarantine Act 1908*;
- improved partnerships with the states and territories and with industry;
- enhanced governance structures, including:
 - an independent commission to assess the biosecurity risks of imports;
 - a national authority to undertake biosecurity operations; and
 - an Inspector-General of Biosecurity to audit the authority's work;
- a risk–return approach to biosecurity operational activities; and
- additional funding for biosecurity activities and upgraded information technology systems.⁷

1.6 In response, the then Government established the Biosecurity Services Group and the Biosecurity Advisory Council.⁸ Additionally, to provide independent oversight of Australia's biosecurity programs, in 2009 the position of the Interim Inspector-General of Biosecurity was established by administrative arrangement. It is

4 The Hon. Tony Burke MP, Minister for Agriculture, Fisheries and Forestry, 'Government acts on another key equine influenza recommendation', Media Release, 11 September 2008.

5 Interim Inspector-General of Biosecurity, 'Background information', <http://www.igb.gov.au/Pages/background-information.aspx> (accessed 2 December 2014).

6 Department of Agriculture, Fisheries and Forestry, *Annual Report 2008–09*, 'Special report: Review of Australian quarantine and by a security ('Beale review')', <http://www.agriculture.gov.au/SiteCollectionDocuments/about/annualreport/0809/beale-review.pdf> (accessed 2 December 2014).

7 Department of Agriculture, Fisheries and Forestry, *Annual Report 2008–09*, 'Special report: Review of Australian quarantine and by a security ('Beale review')', <http://www.agriculture.gov.au/SiteCollectionDocuments/about/annualreport/0809/beale-review.pdf> (accessed 2 December 2014).

8 Department of Agriculture, Fisheries and Forestry, *Annual Report 2008–09*, 'Special report: Review of Australian quarantine and by a security ('Beale review')', <http://www.agriculture.gov.au/SiteCollectionDocuments/about/annualreport/0809/beale-review.pdf> (accessed 2 December 2014).

not a statutory position.⁹ The Interim Inspector-General's responsibilities include functions previously assigned to the Inspector General of Horse Importation.¹⁰

1.7 The then Government also commenced development of a new legislative framework for biosecurity regulation.¹¹ This work culminated in the Biosecurity Bill 2012 and the Inspector-General of Biosecurity Bill 2012.¹²

2012 draft legislative amendments

1.8 The Biosecurity Bill 2014 is closely modelled on draft legislation introduced to the 43rd Parliament.¹³ The Biosecurity Bill 2012 (the 2012 Bill) and the Inspector-General of Biosecurity Bill 2012 were introduced in the House of Representatives on 28 November 2012. The provisions of the bills were referred to the Senate Rural and Regional Affairs and Transport Committee for inquiry and report. The committee received submissions on the proposed legislative changes and held four hearings to ascertain the views of stakeholders, which included a broad cross section of industry and state and territory governments.¹⁴ The bills lapsed when Parliament was prorogued on 5 August 2013. While recognising that the inquiry into the 2012 bills was conducted by a differently constituted committee into a different set of the bills, the committee is grateful for the work of the then Senate Rural and Regional Affairs and Transport Legislation Committee. The committee has been mindful of the evidence provided by the thirty-nine submitters to that inquiry, and by witnesses who appeared at the hearings held in Canberra, Perth, Hobart and Brisbane.¹⁵

1.9 While substantially replicating the 2012 draft legislation, the Biosecurity Bill 2014 varies in three main respects:

- The Biosecurity Bill 2014 would allow the pest and disease status of each region to be included in a Biosecurity Import Risk Analysis (BIRA). The

9 Biosecurity Bill 2014, Explanatory Memorandum, p. 371.

10 Interim Inspector-General of Biosecurity, 'Background information', <http://www.igb.gov.au/Pages/background-information.aspx> (accessed 2 December 2014).

11 Department of Agriculture, Fisheries and Forestry, *Annual Report 2008–09*, 'Special report: Review of Australian quarantine and by a security ('Beale review')', <http://www.agriculture.gov.au/SiteCollectionDocuments/about/annualreport/0809/beale-review.pdf> (accessed 2 December 2014).

12 Biosecurity Bill 2012, Explanatory Memorandum, p. 1; Inspector-General of Biosecurity Bill 2012, Explanatory Memorandum, p. 4.

13 The Hon. Barnaby Joyce MP, Minister for Agriculture, 'Historic Biosecurity Bill 2014 to safeguard Australia', Media Release, 7 July 2014.

14 Details of the committee's inquiry can be found on the inquiry webpage: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Biosecurity2012 (accessed 2 December 2014).

15 Details of the 2012 inquiry are listed are available online: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Biosecurity2012 (accessed 4 March 2015).

2012 Bill did not allow for regional variations to be taken into account. Submitters to the committee's 2012 inquiry were highly critical of that approach.¹⁶

- The Inspector-General of Biosecurity Bill 2012 proposed to establish the Inspector-General as a statutory officer, responsible for reviewing the performance of functions and the exercise of powers by the Director of Biosecurity, biosecurity officers and biosecurity enforcement officers. This role would have also included reviewing the process for conducting BIRAs.¹⁷ The 2014 bill package does not include a Inspector-General of Biosecurity Bill. The current bill would retain the office of the Inspector-General of Biosecurity as an administrative position.¹⁸ Consequently, rather than having a clearly defined statutory role, the Inspector-General's role would continue to be determined by the Minister.¹⁹
- In contrast to the approach taken in the 2012 Bill, the Biosecurity Bill 2014 locates in the one chapter all proposed provisions relating to monitoring, investigation, and enforcement powers. The Department of Agriculture has advised that this approach reflects requirements in the *Regulatory Powers (Standard Provisions) Act 2014* and current legislative drafting protocols.²⁰

1.10 The Hon. Barnaby Joyce MP, Minister for Agriculture, has advised that these changes are designed to take into account industry concern with the 2012 Bill.²¹ The explanatory memorandum to the Biosecurity Bill 2014 also notes that the Government's decision to retain the Inspector-General of Biosecurity as an administrative, rather than a statutory, position reflects the Government's policy commitment to avoid unnecessary regulation.²² According to the Minister, retaining the Inspector-General of Biosecurity as an administrative position is not intended to

16 See, for example, Mr Kim Evans, Secretary, DPIPWE, *Committee Hansard*, 8 May 2013, p. 2; Primary Industry Biosecurity Action Alliance, *Submission 34 to the inquiry into the Biosecurity Bill 2012 and related bills*, p. 4; Mr Michael Grainger, Chair, Brand Tasmania, *Committee Hansard*, 8 May 2013, p. 41. Submissions and Hansard are accessible through the committee's inquiry webpage:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Biosecurity2012 (accessed 2 December 2014).

17 Inspector-General of Biosecurity Bill 2012, Explanatory Memorandum, p. 1.

18 Department of Agriculture, Biosecurity Bill 2014 and supporting Bills, <http://www.agriculture.gov.au/bsg/biosecurity-reform/new-biosecurity-legislation> (accessed 1 December 2014).

19 Biosecurity Bill 2014, Explanatory Memorandum, p. 371.

20 Department of Agriculture, Biosecurity Bill 2014 and supporting Bills, <http://www.agriculture.gov.au/bsg/biosecurity-reform/new-biosecurity-legislation> (accessed 1 December 2014).

21 The Hon. Barnaby Joyce MP, Minister for Agriculture, 'Historic Biosecurity Bill 2014 to safeguard Australia', Media Release, 7 July 2014.

22 Biosecurity Bill 2014, Explanatory Memorandum, p. 371.

diminish the Inspector-General's capacity 'to provide constructive recommendations for improvements to Australia's biosecurity system'.²³

Overview of provisions - Biosecurity Bill 2014

1.11 The Biosecurity Bill is intended to provide a high-level framework for the regulation of biosecurity risks.²⁴ The draft legislation is principles-based, laying a foundation for biosecurity management. It is envisaged that detailed operational requirements would be contained in subordinate legislation.²⁵ The bill would be jointly administered by the Ministers for Health and Agriculture.²⁶

Comparison to Quarantine Act 1908

1.12 The regulatory impact statement accompanying the bill identifies a number of flaws with the operation of the Quarantine Act. These include the following.

- Duplicate and overlapping powers that cause confusion for importers and others seeking to comply with the requirements of the Quarantine Act.
- Over-regulation, lack of flexibility and inconsistency between current regulatory arrangements and businesses' operational practices and structures.
- A lack of penalty provisions, which restricts the Commonwealth's ability to appropriately respond to the risk posed by people or companies who repeatedly breach the Quarantine Act.
- Limited powers to allow the management of invasive pests onshore, making the Commonwealth dependent on inconsistent state and territory legislation.
- Lack of clarity about the processes for ports to be proclaimed, or to cease to be proclaimed, as a first point of entry.
- An inability under the current legislative framework for Australia to give effect to the International Maritime Organisation's Ballast Water Management Convention.

1.13 To address these issues, the bill would remove existing duplication within the Quarantine Act.²⁷ While many of the powers proposed in the bill are similar to those

23 Biosecurity Bill 2014, Explanatory Memorandum, p. 371.

24 Biosecurity Bill 2014, Explanatory Memorandum, p. 8.

25 Department of Agriculture, *Biosecurity Bill 2014 and supporting Bills*, <http://www.agriculture.gov.au/bsg/biosecurity-reform/new-biosecurity-legislation> (accessed 1 December 2014).

26 The Hon. Barnaby Joyce MP, Minister for Agriculture, 'Historic Biosecurity Bill 2014 to safeguard Australia', Media Release, 7 July 2014.

27 Biosecurity Bill 2014, Explanatory Memorandum, p. 8.

under the Quarantine Act, the bill would also expand the regulatory framework.²⁸ The proposed new powers and procedures include:

- powers to allow for the management of a wider range of pests and diseases;
- a single, Australia-wide ballast water incident management regime, which would allow for the management of the biosecurity risks posed by ballast water held on domestic and international ships;
- increased capacity for Australia to respond to multiple contraventions of biosecurity laws—proposed measures include a 'fit and proper person' test to consider a person's compliance history, and an 'associate test' to consider whether a person applying for an import permit, for example, is an associate of a person the Department of Agriculture does not consider to be a fit and proper person;
- flexible biosecurity measures to strengthen the Commonwealth's capacity to manage the public health risks posed by serious communicable diseases;
- civil penalty provisions, such as infringement notices, civil penalties, and enforceable undertakings; and
- expanded powers to enter and search premises with or without a warrant.²⁹

1.14 The bill would also promote a risk-based approach to biosecurity intervention, under which resources are focused on the risks of greatest biosecurity concern. The explanatory memorandum notes that 'the bill will support this approach by providing flexible and responsive powers that allow biosecurity officials to best target risk, based on the circumstances of each case'.³⁰ The regulatory impact statement explains:

Australia's biosecurity system is based on a risk based approach to managing biosecurity risk. This approach focuses on the goods and entities that are assessed as being the highest risk and puts a greater emphasis on compliance.³¹

1.15 It further advises that a risk-based approach is intended to reduce the costs, and the regulatory burden, for clients and government.³²

Structure of the Biosecurity Bill 2014

1.16 The structure of the Biosecurity Bill differs from that of the Quarantine Act. The legislation has been restructured to be easier to navigate and, ideally, to allow powers and obligations to be more readily identified and administered.³³ As noted in

28 Biosecurity Bill 2014, Explanatory Memorandum, p. 8.

29 Biosecurity Bill 2014, Explanatory Memorandum, pp 8–10.

30 Biosecurity Bill 2014, Explanatory Memorandum, pp 9.

31 Biosecurity Bill 2014, Explanatory Memorandum, p. 380.

32 Biosecurity Bill 2014, Explanatory Memorandum, p. 376.

33 Biosecurity Bill 2014, Explanatory Memorandum, p. 8.

the explanatory memorandum, the bill can be divided into three main areas, namely, operational chapters that support day-to-day biosecurity business; standalone chapters that support specialist biosecurity situations; and general administration chapters that support other necessary functions and powers.³⁴

Operational chapters

1.17 The operational chapters (Chapters 3, 4 and 6) set out the powers by which biosecurity officials may identify, assess and manage biosecurity risks in relation to goods, conveyances and onshore pest or disease incursions.

1.18 Chapter 3 would provide biosecurity officials the authority to manage goods that may pose a biosecurity risk when entering Australia. Proposed management options include the power to prohibit goods from being brought into Australia. The level of potential risks would be determined by conducting a BIRA, which is similar to the current Import Risk Analysis process.³⁵

1.19 Chapter 4 would provide for the assessment of the level of biosecurity risk posed by conveyances entering Australian territory. Proposed biosecurity measures include controlling the places where conveyances can land or moor, through requiring conveyances to arrive at a declared first point of entry. This chapter would establish the process by which the Director of Biosecurity or the Director of Human Biosecurity may declare a location a first point of entry.

1.20 Chapter 6 would provide powers to control biosecurity risks within Australia, including Australia's territorial waters. 'Biosecurity risk' would be defined to include the likelihood of a disease or pest, including invasive pests, entering Australian territory and the potential for the disease or pest to harm human, animal or plant health, the environment or the economy.

1.21 Proposed powers to manage unacceptable levels of biosecurity risks include the authority to establish 'biosecurity monitoring zones' in which biosecurity officers may undertake monitoring and surveillance activities. The bill would allow for two kinds of biosecurity monitoring zones—permanent biosecurity monitoring zones and temporary biosecurity monitoring zones. It is proposed that permanent biosecurity monitoring zones would be areas in Australian territories that are considered to pose a high level of biosecurity risk—such as first points of entry.

1.22 Where pest or disease incursions are identified, Chapter 6 would also allow a biosecurity activity zone to be declared. It is proposed that biosecurity officers would be authorised to control where and how people, goods or conveyances enter or exit the zone.

34 Biosecurity Bill 2014, Explanatory Memorandum, p. 11.

35 Biosecurity Bill 2014, Explanatory Memorandum, p. 11; Department of Agriculture, *Biosecurity Bulletin*, Edition 6, 2014, <http://www.agriculture.gov.au/biosecurity/about/reports-pubs/biosecurity-bulletin/2014/edition-6> (accessed 9 December 2014).

Specialist biosecurity management chapters

1.23 Chapters 2, 5, 7 and 8 outline and support specialist biosecurity management.

1.24 Chapter 2 contains proposed powers to manage biosecurity risks to human health. These powers would only apply to listed human diseases as determined by the Director of Human Biosecurity. Before imposing biosecurity measure, the principles in Chapter 2, Part 1, Division II must be considered. The principles would include that the decision-maker is satisfied the exercise of power is likely to contribute to managing the risk, is appropriate and specifically tailored to manage the risk, and that the circumstances are sufficiently serious to justify the proposed exercise of powers. Biosecurity measures to manage the risk of communicable diseases would include powers to issue a 'human biosecurity control order', under which an individual may be required to comply with certain biosecurity control measures such as vaccination, restrictions on the individual's behaviour and requiring the individual to remain isolated.

1.25 Chapter 5 would introduce powers to allow the Commonwealth to respond to the risks posed by ballast water in international and domestic vessels. Measures in the proposed Australia-wide ballast water incident management regime would include requiring the operator of a vessel to give a report if it is intended that the vessel discharge ballast water in Australian seas. The explanatory memorandum advises that the chapter seeks to further implement Australia's obligations as a signatory to the International Health Regulations.³⁶

1.26 Chapter 7 would enable the Director of Biosecurity or the Director of Human Biosecurity to approve arrangements to allow industry to carry out activities to manage biosecurity risks associated with specified goods or premises. The explanatory memorandum notes that the chapter would 'allow the Commonwealth to partner with industry through an approved arrangement scheme', under which industry participants may 'manage the biosecurity risks associated with their own operations in the most efficient and effective way.'³⁷ Such an arrangement would be known as an 'approved arrangement'.

1.27 Chapter 8 outlines proposed powers to respond to biosecurity emergencies and human biosecurity emergencies of national significance. The proposed powers are intended to complement existing arrangements and state and territory controls.³⁸ The Governor-General would be authorised to issue a 'biosecurity security emergency' declaration if the Minister of Agriculture is satisfied that the special powers contemplated in Chapter 8 of the bill are necessary to deal with biosecurity emergencies of national significance. Proposed powers to respond to such

36 Biosecurity Bill 2014, Explanatory Memorandum, p. 12.

37 Biosecurity Bill 2014, Explanatory Memorandum, p. 12.

38 Biosecurity Bill 2014, Explanatory Memorandum, p. 13.

emergencies include the power to evacuate places and to restrict or prevent the movement of persons, goods or conveyances between specified places.

General administration chapters

1.28 Chapters 1, 9, 10 and 11 are intended to provide a framework for the administration of Australia's biosecurity system. While Chapter 9 is included in the list of general administration chapters in the explanatory memorandum, it contains significant coercive monitoring and entry, search and seizure powers and therefore will be considered separately.

1.29 Chapter 1 addresses administrative matters such as jurisdiction, commencement of the proposed legislation, and definitions of key terms.

1.30 Chapter 10 would create the positions of the Director of Biosecurity, the Director of Human Biosecurity, biosecurity officers, biosecurity enforcement officers and human biosecurity officers. According to the explanatory memorandum it is intended that the Secretary of the Department of Agriculture would be appointed as the Director of Biosecurity, and the Commonwealth Chief Medical Officer would be appointed as the Director of Human Biosecurity.³⁹

1.31 Chapter 11 contains miscellaneous matters, that is, topics that do not belong in other chapters but are considered important to the overall administration of the bill. Matters include cost recovery, exemptions and modifications, immunity, information sharing and reviewable decisions, as well as provisions relating to the application of relevant treaties.

Coercive monitoring powers

1.32 Chapter 9 would introduce a range of new monitoring and enforcement powers. The explanatory memorandum advises that these powers are intended to operate as 'tools to manage compliance and enforcement' and are 'designed to encourage clients to voluntarily comply with biosecurity requirements'.⁴⁰ Biosecurity officers would be authorised to enter and search premises with consent or under a warrant. The bill would also provide biosecurity officers additional powers to respond to biosecurity emergencies. In these circumstances, biosecurity officers would be authorised to enter and search premises without warrant.

Offences

1.33 The bill also contains a number of proposed offences. Aspects of the proposed offences deviate from normal Commonwealth practice. Notably, the bill:

- contains several strict liability offences;

39 Biosecurity Bill 2014, Explanatory Memorandum, p. 13.

40 Biosecurity Bill 2014, Explanatory Memorandum, p. 13.

- contains penalties that exceed the recommended levels for like offences in existing Commonwealth legislation;
- reverses the evidential burden of proof in a number of cases; and
- abrogates the privilege against self-incrimination.

1.34 The explanatory memorandum advises that all departures from the standard Commonwealth approach to framing offences have been approved by the Commonwealth Attorney-General.⁴¹

Overview of provisions: Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014

1.35 The Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014 would introduce transitional arrangements, which are intended to ensure a seamless transition from existing regulatory requirements under the Quarantine Act to the proposed new biosecurity framework.⁴² Directions and permits issued under the Quarantine Act would, for the most part, continue to be valid and would take effect as if issued under the Biosecurity Act. This would allow operators to transition to any new requirements proposed under the Biosecurity Bill. It would also ensure that arrangements, such as surveillance and control activities, in place at the time the Quarantine Act was repealed would continue to be valid and enforceable.⁴³

1.36 For example, in relation to permits for first points of entry, such as international airports and Australian ports, the explanatory memorandum provides the following advice:

Schedule 3 provides a three-year transition period for first points of entry... This three-year transition period will provide port and landing place operators additional time to upgrade their facilities (if necessary) and undertake any additional activity to satisfy the requirements. This transition period can be extended.⁴⁴

1.37 Notably, the bill would repeal the Quarantine Act and the *Quarantine Charges (Collections) Act 2014*. The repeal would take effect on the day the operative

41 Biosecurity Bill 2014, Explanatory Memorandum, pp 14–17.

42 Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014, Schedules 3 and 4.

43 Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014, Explanatory Memorandum, pp 5–7.

44 Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014, Explanatory Memorandum, p. 6.

provisions in the Biosecurity Bill (if enacted) commence.⁴⁵ Provisions modelled on the Quarantine Charges (Collections) Act would be located in the Biosecurity Bill.⁴⁶

1.38 The bill would also provide for consequential amendments to existing Commonwealth legislation, to ensure the statute book takes account of the proposed repeal of the Quarantine Act and the introduction of new biosecurity legislation. Amendments are proposed to 20 Commonwealth Acts, which include the *Customs Act 1901*, the *Environmental Protection and Biodiversity Conversation Act 1999*, the *Fisheries Management Act 1991* and the *National Health Act 1953*.⁴⁷

Overview of provisions: Quarantine Charges (Imposition—Customs) Amendment Bill 2014, Quarantine Charges (Imposition—Excise) Amendment Bill 2014 and the Quarantine Charges (Imposition—General) Amendment Bill 2014

1.39 The biosecurity reform bills include three bills that would allow government to recover the cost of indirect services that would be provided under the Biosecurity Bill (if enacted). The *Quarantine Charges (Imposition—Customs) Act 2014*, *Quarantine Charges (Imposition—Excise) Act 2014* and the *Quarantine Charges (Imposition—General) Act 2014* outline the arrangements under which government may recover the costs associated with the indirect biosecurity services provided by the Department of Agriculture for the benefit of importers.⁴⁸ The bills would transfer these arrangements to the proposed new biosecurity framework. As noted in the explanatory memorandum, this would 'sit alongside the proposed fee-for-service cost recovery mechanisms in the Biosecurity Bill.'⁴⁹ This reflects current arrangements under the Quarantine Act.⁵⁰

Consideration by Parliamentary legislative scrutiny committees

1.40 The committee recognises the work undertaken by other Parliamentary committees responsible for considering draft legislation. The Parliamentary Joint Committee on Human Rights concluded that while the bills would limit multiple

45 Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014, cl. 2.

46 Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014, Explanatory Memorandum, p. 4.

47 Biosecurity (Consequential Amendments and Transitional Provisions) Bill 2014, Schedule 2.

48 Quarantine Charges (Imposition—Customs) Bill 2014, Quarantine Charges (Imposition—Excise) Bill 2014 and the Quarantine Charges (Imposition—General) Bill 2014, Explanatory Memorandum, p. 3.

49 Quarantine Charges (Imposition—Customs) Amendment Bill 2014, Quarantine Charges (Imposition—Excise) Amendment Bill 2014 and the Quarantine Charges (Imposition—General) Amendment Bill 2014, Explanatory Memorandum, p. 3.

50 Quarantine Charges (Imposition—Customs) Bill 2014, Quarantine Charges (Imposition—Excise) Bill 2014 and the Quarantine Charges (Imposition—General) Bill 2014, Explanatory Memorandum, p. 3.

rights, such as the right to freedom of movement and the right to privacy, the limitations on these rights would be justified and compatible with Australia's human rights obligations.⁵¹

1.41 The Senate Standing Committee for the Scrutiny of Bills also examined the Biosecurity Bill and related bills. The committee identified a number of issues, and in most circumstances noted the detailed comments provided in the explanatory memorandum. In some instances the committee requested further information from the Minister for Agriculture and is awaiting a response. These comments are discussed in more detail in chapter 2 of this report.⁵²

Conduct of inquiry

1.42 The committee advertised the inquiry on its webpage and in *The Australian*, calling for submissions by 16 January 2015. The committee also wrote to a range of organisations and individuals likely to have an interest in the matters covered by the bills, drawing their attention to the inquiry and inviting them to make written submissions.

1.43 The committee received 28 submissions, as listed in Appendix 1. Submissions were published on the committee's inquiry webpage.

1.44 The committee held a hearing in Canberra on 11 February 2015. A list of persons and organisations who gave evidence at the hearing is in Appendix 2.

Acknowledgement

1.45 The committee thanks the organisations and individuals that made submissions to the inquiry or appeared at public hearings. The committee acknowledges the efforts of the organisations and individuals who contributed not only to this inquiry but to the inquiry into the 2012 bills. This work has informed the committee's deliberations.

Note on references

1.46 References to Hansard are to proof Hansard. Page numbers may vary between the proof and the official (final) Hansard.

51 Parliamentary Joint Committee on Human Rights, *18th report of the 44th Parliament*, 10 February 2015, p. 33.

52 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 2 of 2015*, 4 March 2015, pp 11–27.

Chapter 2

Key issues – Biosecurity Bill 2014

2.1 Submitters to the inquiry supported, in principal, the repeal of the *Quarantine Act 1908* and the introduction of the Biosecurity Bill 2014 and related draft legislation. However, suggestions for improvement were made. Submitters:

- highlighted issues with aspects of the bill, including offshore quarantine zones, cost recovery requirements, and offences and enforcement powers;
- noted with concern apparent differences between the bill and the 2012 draft legislation; and
- questioned whether the bill would provide sufficient and transparent review processes, particularly regarding the biosecurity import risk analysis process.

2.2 Additionally, submitters commented on issues relevant to the implementation of a new biosecurity system, and questioned the merit of the consultation processes for the bill and the proposed subordinate legislation. This report reflects the main themes and issues brought to the attention of the committee by submitters to this inquiry.

General support for the bill

2.3 Submitters expressed strong general support for the introduction of the bill.¹ It was recognised that the ageing Quarantine Act can no longer support modern demands. Submitters characterised the regulatory framework established by the Quarantine Act as both outdated and out of touch with Australia's current biosecurity needs.² As the Australian Forest Products Association submitted, 'it is high time to revise and consolidate the archaic *Quarantine Act 1908*...with a modern and effective regulatory framework'.³

2.4 Submitters were generally satisfied the bill, if passed, would significantly address deficiencies in the Quarantine Act and lead to a more efficient regulatory system. The Tasmanian Salmonid Growers Association considered that 'many of the proposed changes to the legislation address the weaknesses in the existing legislation'.⁴ Overall, it was evident that industry expects that the bill, if passed, would reduce existing complexities within the biosecurity system. AUSVEG noted 'the bill intends to bring much greater simplification to the existing system', while the Food

1 See, for example, Australian Pork Limited, *Submission 17*, p. 1; Cherry Growers Australia Inc, *Submission 5*, p. 1; National Farmers' Federation, *Submission 19*, cover letter.

2 See, for example, Australian Banana Growers' Council Inc, *Submission 13*, p. 1; Tasmanian Salmonid Growers Association, *Submission 6*, p. 3.

3 Australian Forest Products Association, *Submission 12*, p. 4.

4 Tasmanian Salmonid Growers Association, *Submission 6*, p. 3.

and Beverage Importers Association (FBIA) submitted the bills would provide a 'more systematic and clearer' regulatory system.⁵

2.5 Several submitters highlighted areas of present confusion for which the bill, if passed, would provide much needed clarity. Notably, Ports Australia commented that the new legislation would address uncertainty about the processes for proclaiming first points of entry:

[T]he current Quarantine Act has no provision for establishing a first point of entry. This was a matter of some concern to ports who wanted to become first points of entry and we are accordingly pleased that the new bill will establish a clear process for securing and maintaining this status.⁶

2.6 Similarly, the FBIA submitted that the Approved Arrangements provisions in Chapter 7 of the bill would significantly remedy issues with antecedent provisions in the Quarantine Act that are 'cumbersome' and out of step with industry practice.⁷

2.7 There was general industry consensus that the proposed system would reduce over-regulation, and promote flexibility and consistency between regulatory requirements and businesses' operational arrangements.⁸ The Australian Forest Products Association Ltd (AFPA) approved the introduction of the principle of 'shared responsibility' between government and industry.⁹ The Customs Brokers and Forwarders Council of Australia Inc (CBFCA) submitted:

It is an industry expectation that the bill will cut red tape and reduce 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.¹⁰

2.8 Submitters approved the risk-based approach to biosecurity regulation, arguing the policy would strengthen Australia's capacity to respond to biosecurity threats. The AFPA approved of the proposed regulatory approach, stating that it would provide 'more outcomes focus to the legislation'.¹¹ Australian Pork Limited noted it is

5 AUSVEG, *Submission 8*, p. 2; Food and Beverage Importers Association, *Submission 22*, pp 1—2.

6 Ports Australia, *Submission 1*, p. 1.

7 Food and Beverage Importers Association, *Submission 22*, p. 2.

8 See, for example, Australian Forest Products Association, *Submission 12*, p. 2. For an exception, see Australian Petroleum Production and Exploration Association, *Submission 25*.

9 Australian Forest Products Association, *Submission 12*, p. 2.

9 Australian Veterinary Association, *Submission 10*, p. 1.

10 Customs Brokers and Forwarders Council of Australia Inc, *Submission 3*, p. 1.

11 Australian Forest Products Association, *Submission 12*, p. 2.

'supportive of the bill and is confident that it will improve the function of Australia's world-class biosecurity system'.¹² The CBFCA advised the council:

actively supports the proposed new biosecurity legislation which will create a responsive and flexible operating environment...The new legislation will provide a better management of the biosecurity security risks of animal, plants, pests and diseases entering in Australia through the international trade pathway.¹³

2.9 However, many submitters offered recommendations for improvement and identified areas where their concerns had not been satisfactorily addressed. Submitters highlighted issues with both provisions of the bill and concerns with the likely implementation of the proposed new regulatory system.

Committee view

2.10 The committee recognises the need for comprehensive revision of Australia's biosecurity legislation. On the whole, the Quarantine Act has served Australia well. However, the piecemeal approach to amendment and update over the past century has led to legislation that is at best inefficient and, at worst, unworkable. The identified problems with prescribing a port as a 'first point of entry' is a key example of the need for a new legislative approach to biosecurity. The committee commends the introduction of the Biosecurity Bill 2014 and related bills. However, the committee notes submitters' views on, and concerns with, aspects of the draft legislation. To ensure the Quarantine Act is replaced with the most appropriate and effective biosecurity legislative scheme, these views warrant more detailed consideration and are discussed below.

Differences between the 2012 bills and the 2014 legislative package

2.11 The bill before the committee is substantially similar to the 2012 iteration that was considered by the committee in 2013. However, there are differences between the two bills—some welcomed by stakeholders and others less so. The Invasive Species Council identified 19 key differences.¹⁴ These were disputed by the department, which advised that the Council's list 'is not complete nor correct'.¹⁵ Overall, submitters noted with concern two key differences between the bill and the 2012 draft legislation: requirements for the regulation of domestic ballast water and the role of the Inspector-General of Biosecurity.

Proposed regulation of domestic ballast water

2.12 The bill proposes to regulate the use of ballast water and management sediment by Australian and foreign vessels in Australian seas. These changes would implement Australia's obligations under the *International Convention for the Control*

12 Australian Pork Limited, *Submission 17*, p. 1.

13 Customs Brokers and Forwarders Council of Australia Inc, *Submission 3*, p. 3.

14 Invasive Species Council, *Submission 16*, pp 4—5.

15 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

and Management of Ships' Ballast Water and Sediments.¹⁶ The ballast water and sediment held on board domestic and international ships have the potential to damage industries that rely on the maritime environment, such as fisheries and tourism.¹⁷

2.13 The Australian Shipowners Association (ASA) welcomed the management of *international* ballast water, observing that 'the industry has long called for consistent international arrangements and for a single national regime rather than piecemeal State-based arrangements'.¹⁸ However, the ASA was critical of the government's decision to introduce controls over domestic ballast water 'before appropriate treatment systems had been fitted to vessels'. The ASA reported that the economic impact would be 'considerable', cost 'tens of millions of dollars' and result in delays.¹⁹ The ASA called for the implementation of the domestic ballast water provisions to be delayed for a period of six years, to enable all vessels to be fitted with ballast water treatment systems.

2.14 Shipping Australia Ltd (SAL) echoed these concerns, arguing that 'while consistent national standards for domestic ballast water are supported, the timing of their introduction is not'.²⁰ SAL cited practical and logistical problems with the timing of the proposed new requirements, advising that 'it is not certain how the additional ballast water reporting arrangements will be implemented in the Maritime Arrivals Reporting Systems (MARS), which is still to be rolled out'.²¹ SAL further emphasised that the proposed domestic ballast water provisions had not been subject to prior industry consultation.²²

2.15 In stark contrast to the advice provided by industry representatives, the Department of Agriculture advised that the proposed ballast water provisions were the subject of industry consultation in 2012 and October 2014. Further, the department advised '[t]here has been no change to the government's ballast water policy position between the two versions of the bill'.²³ The regulation of domestic ballast water is not unique to the 2014 bill, but was a feature of the Biosecurity Bill 2012:

The Biosecurity Bill 2012 included an Australia-wide ballast water and sediment management regime, which included the management of both international and domestic ballast water.²⁴

16 Department of Agriculture and Department of Health, *Submission 15*, pp 19–20.

17 Department of Agriculture and Department of Health, *Submission 15*, p. 7.

18 Australian Shipowners Association, *Submission 11*, p. 1.

19 Australian Shipowners Association, *Submission 11*, p. 1.

20 Shipping Australia Ltd, *Submission 23*, p. 1.

21 Shipping Australia Ltd, *Submission 23*, p. 1.

22 Shipping Australia Ltd, *Submission 23*, p. 1.

23 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

24 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015); Biosecurity Bill 2012, Part 2, Chapter 5; clause 269.

2.16 This advice was also provided in the department's submission to the committee's inquiry into the Biosecurity Bill 2012.²⁵

2.17 However, the department did advise that requirements for pre-arrival reporting have been extended in the 2014 bill to encompass all vessels intending to discharge ballast water.²⁶

2.18 The Department of Agriculture further advised that a six year delay in implementing the domestic ballast water requirements is unnecessary as the bill would allow several options to manage domestic ballast water. These options would include ballast water exchanges and obtaining exemptions from the Director of Biosecurity, which would 'limit the regulatory impact of the requirements of the bill whilst industry prepares for the changes.'²⁷ Further, department stated its 'intention, where appropriate, to liaise with regulated stakeholders regarding the development of any regulations and administrative policy.'²⁸

Committee view

2.19 The regulation of ballast water would clearly have an impact on the shipping industry. However, the department has provided assurances that it would work with industry to facilitate its transition to the new requirements. The committee considers that this is an appropriate response, especially given Australia's international maritime obligations.

Inspector-General of Biosecurity

2.20 As detailed in chapter 1 of this report, the 2012 draft legislation included the Inspector-General of Biosecurity Bill 2012 that, if passed, would have transformed the Office of the Inspector-General of Biosecurity from an administrative to a statutory position. The bill would have clearly defined the role and responsibilities of the Inspector-General of Biosecurity. Prescribed responsibilities would have included reviewing and publicly reporting on the performance of biosecurity officials and the process for conducting biosecurity import risk analyses (BIRAs).²⁹ As noted in the explanatory memorandum to the 2012 bill, it was intended that this independent oversight would 'provide an assurance framework for stakeholders' and encourage continual improvement.³⁰ Overall, submitters to the 2012 inquiry supported the

25 Department of Agriculture, Fisheries and Forestry, *Submission 26* (inquiry into the Biosecurity Bill 2012), Attachment A.

26 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015); Biosecurity Bill 2012, Part 2, Chapter 5; clause 269.

27 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

28 Department of Agriculture and Department of Health, *Submission 15*, p. 20.

29 Inspector-General of Biosecurity Bill 2012, clause 6.

30 Inspector-General of Biosecurity Bill 2012, explanatory memorandum, p. 1.

objectives of the Inspector-General of Biosecurity Bill 2012. However, submitters sought additional measures to further the Inspector's independence.³¹

2.21 While the review process would differ, the Biosecurity Bill 2014 does include a framework for the review of the exercise of the powers and functions of biosecurity officials. Clause 567 would authorise the Minister to review the administration of the biosecurity regulatory requirements. Clause 643 would allow the review powers to be delegated. The explanatory memorandum clarifies that it is envisaged the review function would be undertaken by the Inspector-General of Biosecurity.³²

2.22 Submitters were highly critical of the proposed review process under clauses 567 and 643. The process was condemned a 'backwards' and 'retrograde' step that would potentially allow conflicts of interest.³³ Submitters highlighted key differences between clauses 567 and 643 and the review process designed under the Inspector-General of Biosecurity Bill 2012. Specifically, submitters noted with concern the proposed discretionary timing, conduct and scope of the reviews and the internal, confidential nature of review findings.³⁴

2.23 Submitters concluded that the bill would not guarantee independent, transparent review. The Law Council of Australia advised that 'the lack of a statutory basis for the Inspector-General of Biosecurity has the potential to reduce the independence of that office.'³⁵ Similar concerns are evident in AUSVEG's comment that clauses 567 and 643 'cannot legitimately be described as an independent review process'.³⁶ One submitter questioned the legitimacy of an internal review framework, characterising the 2014 proposal as 'a major step backwards in the necessary integrity of Australia's biosecurity system'.³⁷

2.24 There was evident concern that the proposed review framework is not aligned with the object of shared responsibility between government and industry. As AUSVEG stated:

[a]s it stands the Department is not subject to any form of mandated review. This is a retrograde step and only serves to reinforce the impression that the

31 See, for example, Australian Veterinary Association, *Submission 14 – 2012 inquiry*, p. 4; AUSVEG, *Submission 2 – 2012 inquiry*, p. 4; Growcom, *Submission 23 – 2012 inquiry*, p. 7; Nursery Garden Institute Australia, *Submission 8 – 2012 inquiry*, p. 8.

32 Biosecurity Bill 2014, explanatory memorandum, p. 368.

33 Tasmanian Salmonid Growers Association, *Submission 6*, p. 6; Invasive Species Council, *Submission 16*, p. 3; AUSVEG, *Submission 8*, p. 9.

34 See, for example, Tasmanian Salmonid Growers Association, *Submission 6*, p. 6; Invasive Species Council, *Submission 16*, p. 3.

35 Law Council of Australia, *Submission 21*, p. 4.

36 AUSVEG, *Submission 8*, p. 9.

37 Richard Stoklosa, *Submission 26*, p. 1.

Department does not want any meaningful dialogue with industry unless it is on their terms.³⁸

2.25 Accordingly, there was strong support for a return to the 2012 approach. It was put to the committee that, contrary to what is proposed in the Biosecurity Bill 2014, the office of the Inspector-General of Biosecurity should be a statutory position.³⁹

2.26 The department took a different view, and informed the committee that the Inspector-General would continue to have broad investigatory powers.⁴⁰ Further, the department advised that, should the Minister's powers be delegated to the Inspector-General, the bill would enhance the Inspector-General's capacity to compel information and would essentially 'enable the existing Inspector-General of Biosecurity to do things that a statutory position would be able to do.'⁴¹

Committee view

2.27 The bill does not seek to diminish the role of the Inspector-General of Biosecurity. Rather, through delegation, the Inspector-General's review powers could increase. The committee notes with interest advice in the explanatory memorandum and evidence before the inquiry that it is envisaged that the Inspector-General would be integral to the maintenance and ongoing improvement of Australia's biosecurity system.

2.28 However, the committee respects submitters' views that there is potential for the independence of internal reviews to be compromised. It is of concern that the bill does not contemplate that review findings will be publicly released. This seems contrary to the shared commitment between government and industry to biosecurity management. It is the committee's view that review findings should be publicly released and reports tabled in Parliament. Additionally, it would benefit Australia's biosecurity management system if reviews were routinely conducted.

Recommendation 1

The committee recommends that the findings of reviews conducted under clause 567 of the Biosecurity Bill 2014 be publicly released and reports tabled in Parliament.

38 AUSVEG, *Submission 8*, p. 9.

39 Law Council of Australia, *Submission 21*, p. 4; NSW Farmers' Association, *Submission 27*, p. 2; Mr Richard Stoklosa, *Submission 26*, pp2—3.

40 Ms Rona Mellor, Deputy Secretary, Department of Agriculture, *Committee Hansard*, 11 February 2015, p. 7.

41 Mr Greg Williamson, First Assistant Secretary, Service Delivery Division, Department of Agriculture, *Committee Hansard*, 11 February 2015, p. 6. See also Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

Concerns with provisions of the bill

2.29 Submitters noted concerns with a number provisions in the bill; of particular note were:

- the Biosecurity Risk Analyses process;
- offshore quarantine zones;
- cost recovery requirements; and
- enforcement provisions, including proposed offences and entry, search and seizure powers.

The Biosecurity Risk Analysis process

2.30 The Biosecurity Import Risk Analysis (BIRA) process proposed by the bill was the source of much concern amongst submitters. The committee heard that particular issues arose from the role of the Eminent Scientists Group (or similar body), regional difference and transparency. Some submitters also expressed dissatisfaction with the consultation process conducted by the department.⁴²

2.31 The current import risk analysis process is not specifically referred to in the Quarantine Act; however it is referred to in the *Quarantine Regulations 2000* and the IRA Handbook 2011.⁴³ Part 2, Division 2, of the bill sets out the proposed scheme for BIRAs. Clause 165 contains a simplified outline of the part, stating that:

This part provides for the Director of Biosecurity to conduct Biosecurity Import Risk Analyses (BIRAs) in relation to particular goods, or a particular class of goods, that may be imported, or are proposed to be imported, into Australian territory.

A BIRA is an evaluation of the level of biosecurity risk associated with the goods or the class of goods.

A BIRA may identify conditions that may be met to manage the level of biosecurity risk associated with the goods, or the class of goods, to a level that achieves the ALOP [Appropriate Level of Protection] for Australia.⁴⁴

2.32 A note has been added, stating:

The level of biosecurity risk associated with the goods may vary according to the place in Australian territory at which the goods are to enter Australian territory or be unloaded, so the conditions may vary accordingly.⁴⁵

42 The government recognises these concerns: Departments of Agriculture and Health, *Submission 15*, p. 14.

43 Department of Agriculture and Department of Health, answer to question on notice, 11 February 2015 (received 27 February 2015), Question 6.

44 Clause 165, Biosecurity Bill 2014. See also Clause 166.

45 Clause 165, Biosecurity Bill 2014. See also Clause 166.

2.33 The ALOP is defined in the bill as 'a high level of sanitary and phytosanitary protection aimed at reducing biosecurity risk to a very low level, but not to zero'.⁴⁶

2.34 The Director of Biosecurity may conduct a BIRA, and decide in which order BIRAs are conducted. The Minister for Agriculture may also direct the Director of Biosecurity to commence a BIRA in relation to particular goods or class of goods. The direction must be in writing, provide reasons and be tabled in both Houses of Parliament.⁴⁷

2.35 The bill does not set out the process the Director of Biosecurity would have to follow when making a BIRA, other than to state that s/he must follow the process set out in the Regulations and any guidelines created by the Director of Biosecurity. The guidelines may provide matters to be taken into account when conducting a BIRA. Any such guidelines would need to be published on the Department of Agriculture's website, and would not be a legislative instrument.⁴⁸

2.36 The bill would require the regulations to require the Director to prepare three reports and as part of the BIRA process: a draft report, a provisional report and a final BIRA report. Each of these reports must include any information prescribed by the regulations and be published in accordance with the regulations.⁴⁹ The explanatory memorandum to clause 170 states that it is intended that stakeholders can comment on the draft reports and that these comments would be taken into account when preparing the provisional and final reports.

2.37 The bill provides neither a right to request review of a BIRA nor a right to request reasons for a BIRA.⁵⁰ The draft regulations and guidelines for making a BIRA are yet to be released by the department. The department has provided a table setting out the differences between the current process and the process proposed by the bill.⁵¹

Criticism of the BIRA process

2.38 Some submitters strongly criticised the BIRA process in the bill, arguing that the bill does not improve transparency, accountability or reduce conflicts of interest.⁵² Curiously, the bill reserves all relevant direction about the process itself to be dealt

46 Clause 5, Biosecurity Bill 2014. Some submitters were critical of the ALOP for Australia as stated in the bill. See, for example: AUSVEG, *Submission 8*, pp 3–4. Others support it, for example Australian Pork, *Submission 17*, p. 2.

47 Clause 168, Biosecurity Bill 2014.

48 Clause 169, Biosecurity Bill 2014.

49 Clause 170, Biosecurity Bill 2014.

50 A large number of decisions made by the Director of Biosecurity, including decisions relating to the importation of goods to Australia that may draw upon the relevant BIRA, would be subject to internal review and would be appealable to the Administrative Appeals Tribunal: Clauses 574—578, Biosecurity Bill 2014.

51 Department of Agriculture and Department of Health, answer to question on notice, 11 February 2015 (received 27 February 2015), Attachment A.

52 See, for example: AUSVEG, *Submission 8*, p. 4; Invasive Species Council, *Submission 16*.

with in the regulations, and the person who conducts the BIRA process is the same person who sets the guidelines to be followed when conducting a BIRA: the Director of Biosecurity.

2.39 For example, AUSVEG observed that Part 2 of the bill 'does not include any requirement for the Director of Biosecurity to provide stakeholders with the reasoning behind decisions for having or not having a BIRA'; nor is there a requirement for BIRAs to be subject to external review.⁵³ More generally, the Australian Honey Bee Industry Council (AHBIC) emphasised that the BIRA process must be timely, and gave the example of the drone semen import analysis that has been ongoing since 2001.⁵⁴ The AHBIC recommended that the bill or regulations be amended to provide that a BIRA is completed within a 'reasonable time frame'. Delays can result in damage or disadvantage to particular industries and 'tempts illegal importation'.⁵⁵

2.40 The following section discusses the key issues.

Criticism of the BIRA process: The role of the Eminent Scientists Group

2.41 A number of submitters criticised the removal of the Eminent Scientists Group (ESG) from the decision making process in the new BIRA.⁵⁶ The AFPA observed that the bill in its current form may be deficient in relation to the BIRA process, submitting that:

[a]ppropriate provisions should be included for expert input with relevance to industry, to ensure scientific rigour and impartiality. Further, an independent appeal process based on facts and science should be included.⁵⁷

2.42 The NSW Natural Resources Commission drew the committee's attention to the difficulty with making an accurate risk assessment when it comes to invasive species, and the need for expert advice:

[T]here is often insufficient information to perform an accurate quantitative risk assessment. Further, risks and impacts to the environment can be difficult, if not impossible, to quantify in economic terms. Given the limitations of quantitative risk assessment, a range of experts should be involved in evaluating outcomes and deliberating responses.

The unique nature of biosecurity risks should be considered in designing any risk assessment process so that long-term impacts are properly evaluated. It may be difficult to assess long-term risks of invasive species relative to emergencies such as disease outbreaks.⁵⁸

53 AUSVEG, *Submission 8*, p. 4.

54 Australian Honey Bee Industry Council, *Submission 14*, p. 4.

55 Australian Honey Bee Industry Council, *Submission 14*, p. 4.

56 See, for example, Mr Richard Stoklosa, *Submission 26*, p. 5.

57 Australian Forest Products Association, *Submission 12*, p. 7.

58 NSW Natural Resources Commission, *Submission 9*, p. 3.

2.43 The Australian Banana Growers Council (ABGC) submitted that the role of the eminent scientists group in the BIRA process must be 'maintained and strengthened'.⁵⁹

2.44 In response to questions asked by the committee, the department emphasised that science is at the centre of its 'evidence based policy development, decision-making and service delivery', and that the department employs a large number of scientists with specialisations in a variety of fields.⁶⁰ Specifically, in relation to the ESG, the department advised that:

[d]uring the examination of the IRA process the department found that the ESG is highly valued in the IRA process but that improvements could be made to increase its value to the department and to stakeholders. Views from stakeholders supported the continuing use of the ESG or similar external expert group in the IRA process. However many stakeholders made comments about its structure, role and timing within the process.⁶¹

2.45 The draft regulations released in 2012 noted that the Director of Biosecurity may commission research or advice when s/he considered that such advice is essential.⁶² The National Farmers' Federation (NFF) observed that the wording in the 2012 draft regulations *may* go some way to addressing its concerns, however 'there remains a lack of independent scientific oversight that, while possibly finding agreement with the Director's final decision, will assist in placing any accusations levelled at the Director for the decision.'⁶³ In response to questioning, the department assured the committee that it would consult further with stakeholders on the use of external scientific advice when the draft regulations and guidelines are released for consultation later this year.⁶⁴

2.46 As the regulations and guidelines have not yet been released by the government the committee is unable to make any further comment on the adequacy or otherwise of these documents as they relate to the BIRA process. Nevertheless, it is clear to the committee that the success of the BIRA process will rest, in part, on the contributions of independent scientists with the appropriate specialist knowledge.

Criticism of the BIRA process: Regional variation

2.47 The committee heard that the bill does not adequately account for regional differences across Australia. This was also a criticism of the 2012 bill.

59 Australian Banana Growers' Council, *Submission 13*, p. 2.

60 Department of Agriculture and Department of Health, answer to question on notice, 11 February 2015 (received 27 February 2015), Question 8.

61 Department of Agriculture and Department of Health, answer to question on notice, 11 February 2015 (received 27 February 2015), Question 8.

62 National Farmers' Federation, *Submission 19*, pp 1–2.

63 National Farmers' Federation, *Submission 19*, p. 2.

64 Department of Agriculture and Department of Health, answer to question on notice, 11 February 2015 (received 27 February 2015), Question 8.

2.48 As outlined earlier, a BIRA may 'identify conditions that must be met to manage the level of biosecurity risk associated with the goods, or class of goods, to a level that achieves the appropriate level of protection for Australia'.⁶⁵ The ABGC expressed concern that the 'generality' of this clause will mean a BIRA could permit certain geographic areas to import particular items because the appropriate level of protection is low in that region. Using the example of fruit importation, the council submitted that once the fruit is in Australia it is very difficult to then prevent the fruit being brought into another area, especially as this responsibility would fall to state governments.⁶⁶ In the case of bananas, the council submitted that:

[i]t is not acceptable to suggest that the protection of a domestic industry from exotic pests and diseases will rely upon the public's goodwill to appropriately dispose of fruit when travelling interstate or between restricted zones. Given that bananas are the single most commonly purchased item in Australian supermarkets, the ABGC considers both the likelihood and consequences of the travelling public transferring disease into commercial growing regions as high.⁶⁷

2.49 The Tasmanian Salmonoid Growers Association were also critical of the bill's failure to formally recognise regional differences when assessing biosecurity risk, submitting that 'the removal of current regional differentiation fails to prevent accidental or mischievous introduction of disease by even a single person'.⁶⁸ Cherry Growers Australia submitted that:

[t]he one size fits all does not suit the continent of Australia and the Federal Government in conjunction with the State and Territory jurisdictions should work together to ensure this occurs and can be flexible to changes over time.

2.50 The department, in its submission, advised that it had addressed these concerns in the 2014 bill:

[T]he provisions in the Biosecurity Bill 2014 have been strengthened to include a note in the provisions for conducting biosecurity import risk analyses which explicitly states that the department can and will consider areas of different pest or disease status when conducting IRAs under the Biosecurity Bill 2014.⁶⁹

2.51 Clause 166 of the bill states that a BIRA will identify the risk posed by a particular good, or class of goods, and detail any necessary biosecurity risk management conditions. The note to the section acknowledges that risk level, and therefore necessary conditions, may vary between geographical areas:

65 Clause 165, Biosecurity Bill 2014.

66 Australian Banana Growers' Council, *Submission 13*, pp 1–2.

67 Australian Banana Growers' Council, *Submission 13*, p. 2.

68 Tasmanian Salmonoid Growers Association, *Submission 6*, p. 4. See also, Richard Stoklosa, *Submission 26*.

69 Departments of Agriculture and Health, *Submission 15*, p. 15.

Clause 166: Note

The level of biosecurity risk associated with the goods may vary according to the place in Australian territory at which the goods are to enter Australian Territory or be unloaded, so the conditions may vary accordingly.

2.52 The department assured the committee that regional difference would be taken into account, and that the differences between regions in Australia are 'valid'.⁷⁰ During the hearing the department advised that it did not consider it appropriate to use the term 'regional difference' in the legislation because 'it is not a term defined in relevant international agreements or standards'.⁷¹ Ms Debbie Langford, Assistant Secretary, Department of Agriculture, explained the measures in the bill that would address the regional differences in Australia:

Firstly, I would point you towards the actual definition of biosecurity risk, and that is in section 9, on page 13 of your copy. In there it says that biosecurity risk is the likelihood of a disease or pest entering, establishing et cetera, and the potential for causing harm. I think the key there is that we will see that it is entering Australian territory or part of Australian territory. And that is so that when we are looking at risk we can say that it is one risk to the country but a different risk to a part of the country. That is something we can do because of that definition.⁷²

Committee view

2.53 The BIRA process is a cornerstone of the bill, and it is important that the framework is fair, accurate and achieves the intended purposes. The committee is concerned that the BIRA process as it is currently articulated may be deficient in these respects. The committee seeks assurances from the department that BIRA reports released by the Director of Biosecurity are subject to review, that reasons for BIRAs will be given, and that there is recourse for stakeholders who disagree with a BIRA made under this Part. The committee also seeks assurances from the department that the regulations will require that reasons for a BIRA be provided to stakeholders, and that, where appropriate, expert scientific assistance will be sought.

2.54 Australia is a large country with diverse regions. Different regions have different risk profiles. The committee recognises the concerns expressed by stakeholders as valid: a one size fits all approach is not appropriate. Pleasingly, this is a view also shared by the department. The committee is satisfied that the department has given weight to the valid concerns expressed. The note to clause 166 would recognise that 'the level of biosecurity risk associated with the goods may vary according to the place in Australia at which the goods are to enter Australia or be

70 Ms Rona Mellor, Deputy Secretary, Department of Agriculture, *Proof Committee Hansard*, 11 February 2015, p. 6.

71 Departments of Agriculture and Health, *Submission 15*, p. 15.

72 Ms Debbie Langford, Assistant Secretary, Department of Agriculture, *Proof Committee Hansard*, 11 February 2015, p. 5.

unloaded'. The committee is satisfied with the department's advice that this will ensure that regional differences can be taken into account when assessing biosecurity risk.

Recommendation 2

2.55 The committee recommends that the government ensure that the Biosecurity Regulations state that the Director of Biosecurity must request expert scientific advice when conducting Biosecurity Import Risk Analyses.

Recommendation 3

2.56 The committee recommends that the government ensure the regulations state that the Director of Biosecurity must provide all stakeholders with a reasonable opportunity to comment on each Biosecurity Import Risk Analysis report.

Recommendation 4

2.57 The committee recommends that the Biosecurity Regulations require that the Director of Biosecurity provide reasons for the conclusions reached in each Biosecurity Import Risk Analysis report.

Recommendation 5

2.58 The committee recommends that the government ensure that the Biosecurity Regulations provide a process for internal review if an interested party disagrees with a final Biosecurity Import Risk Analysis report.

Offshore quarantine zones

2.59 Clause 191 would establish the boundaries of Australia's quarantine zone by making all aircraft and vessels entering 'Australian territory' subject to biosecurity controls. Relevantly, clause 12 would define 'Australian territory' to include the 'coastal sea of Australia'. While not explored in the explanatory memorandum to the bill, Australia's coastal sea, and therefore 'Australian territory', extends to 12 nautical miles off the Australian coast. This figure is the culmination of definitions spread across the bill, the *Acts Interpretation Act 1901*, the *Seas and Submerged Lands Act 1973* and the United Nations Convention on the Law of the Sea.

2.60 At present, Australia's quarantine zone encompasses Australia's 'exclusive economic zone', which is 200 nautical miles from the Australian coast. The bill would have the effect of moving the quarantine boundary from 200 nautical miles to 12 nautical miles.⁷³ As the department acknowledged, this substantial change in the jurisdiction of Australia's quarantine zone would shift the regulatory focus from sea-based installations to vessels travelling from installations to Australia's coastal sea. As the department explained:

regulation under the Quarantine Act largely focuses on interactions between an installation and an international conveyance. However, this is not the primary area of biosecurity risk...It is movements by domestic conveyances

73 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

travelling between the installation and mainland Australia that pose the greatest biosecurity risk.⁷⁴

2.61 The department acknowledged the jurisdictional change would transfer the regulatory burden, with the effect that 'conveyances travelling between Australia and an installation outside 12 nautical miles would be subject to additional requirements'.⁷⁵ However, the committee was informed that this is necessary to appropriately target biosecurity risks:

The bill will achieve better risk management outcomes by shifting legislative focus to conveyances entering Australian territory...Installations are remote and located in deep waters beyond the 12 nautical mile mark. This remoteness means that the installation itself and any interaction with international conveyances that do not travel on to mainland Australia do not pose a significant biosecurity security risk.⁷⁶

2.62 The Australian Shipowners Association was critical of this proposed change, submitting that:

[t]his change will result in an enormous compliance and operational burden for thousands of vessel movements compared to the handful of international facilities that previously required quarantine clearance each year.⁷⁷

2.63 The Australian Petroleum Production and Exploration Association (APPEA) shared these concerns, estimating that compliance costs would exceed \$10 million per year. APPEA also advised that imposing biosecurity regulations on currently unregulated activities would present operational difficulties that could substantially increase business costs.⁷⁸ APPEA also warned that the additional regulation would undermine the industry's global competitiveness.⁷⁹

2.64 The Department of Agriculture advised it intends to deal with this change in policy through Approved Arrangements, exemptions and standing permissions; the particulars of which will be dealt with in the regulations.⁸⁰ However both APPEA and the ASA were sceptical of this approach, questioning the form and content of the proposed regulations.⁸¹ As the ASA stated:

"We'll sort it out in the regulations" is not a satisfactory basis for industry to be assured that the requirements will not pose an excessive burden.⁸²

74 Department of Agriculture and Department of Health, *Submission 15*, p. 19.

75 Department of Agriculture and Department of Health, *Submission 15*, p. 19.

76 Department of Agriculture and Department of Health, *Submission 15*, p. 19.

77 Australian Shipowners Association, *Submission 11*, p. 1.

78 Australian Petroleum Production and Exploration Association, *Submission 25*, p. 1.

79 Australian Petroleum Production and Exploration Association, *Submission 25*, p. 2.

80 Department of Agriculture and Department of Health, *Submission 15*, p. 19.

81 Australian Shipowners Association, *Submission 11*, p. 4; Australian Petroleum Production and Exploration Association, *Submission 25*, p. 2.

82 Australian Shipowners Association, *Submission 11*, p. 4.

2.65 The ASA also questioned the process for obtaining exemptions, advising that such arrangements would be:

an acceptable outcome provided that such exemption is automatic or deemed and the vessel itself...does not have to apply to be granted such exception.⁸³

2.66 The associations also disputed the necessity for the new regulatory approach, arguing that the process would not improve biosecurity management but would increase red tape and be inconsistent with the policy to remove unnecessary regulation.⁸⁴

Committee view

2.67 Retracting Australia's quarantine zone from 200 nautical miles to 12 nautical miles is a significant change. While the committee considers that it is an appropriate and proportionate response to targeting the biosecurity risks presented by vessels entering Australian territory, the effect on Australia's shipping industry should not be underestimated.

2.68 The committee agrees with the intended approach to develop Approved Arrangements, exemptions and standing permissions to ensure that biosecurity requirements are not only robust and effective but are appropriately tailored for industry participants. The committee anticipates that a broad cross-section of affected industries would seek Approved Arrangements and related instruments. This would foster a culture of working partnership between government and industry and, in turn, strengthen Australia's biosecurity response.

2.69 However, the committee has not received assurances that Approved Arrangements, exemptions and standing permissions will be finalised before the new biosecurity requirements would commence. As new regulatory requirements, the affected vessels could not access the three year transition period that would be afforded to vessels currently regulated (as detailed in chapter 1 of this report). Industry's concern is therefore understandable.

2.70 The committee recommends the Department of Agriculture commit all resources necessary to ensure that Approved Arrangements, exemptions and standing permissions arising out of the proposed jurisdictional change would be in force before the bill, if passed, would commence. The committee will be seeking the department's advice on its progress with this matter.

Recommendation 6

2.71 The committee recommends that the Department of Agriculture commit all resources necessary to ensure that Approved Arrangements, exemptions and standing permissions arising out of the proposed change in Australia's

83 Australian Shipowners Association, *Submission 11*, p. 5.

84 Australian Shipowners Association, *Submission 11*, p. 4; Australian Petroleum Production and Exploration Association, *Submission 25*, p. 2.

quarantine zone from 200 nautical miles to 12 nautical miles are in force before the bill, if passed, would commence.

Recommendation 7

2.72 The committee recommends that the Department of Agriculture provide updates to the committee on its progress with developing Approved Arrangements, exemptions and standing permissions arising out of the proposed change in Australia's quarantine zone from 200 nautical miles to 12 nautical miles.

2.73 The committee also notes that neither the explanatory memorandum nor the bill clearly define the territorial limits of Australia's quarantine zone. Legislation, and its requirements, should be clear, easy to interpret and to apply. It is of some concern to the committee that it requires interpretation of multiple pieces of legislation to understand the extent of the proposed biosecurity zone. The committee recommends that a note be added to clause 12 of the bill to clearly advise the reader of the legislative basis for the boundaries of Australia's quarantine zone. At a minimum, the explanatory memorandum should be amended to provide an overview of the relevant sections in the Acts Interpretation Act, the Seas and Submerged Lands Act and the United Nations Convention on the Law of the Sea.

Recommendation 8

2.74 The committee recommends that a note be added to clause 12 of the Biosecurity Bill 2014 to clearly advise the reader of the legislative basis for the boundaries of Australia's biosecurity zone.

Recommendation 9

2.75 The committee recommends that the explanatory memorandum to the Biosecurity Bill 2014 be amended to clearly outline the legislative basis for the 12 nautical mile quarantine boundary proposed under the Biosecurity Bill 2014.

Cost recovery

2.76 Part 3, Chapter 11 of the bill would allow the government to charge fees for activities carried out under the bill, if passed. Part 3 would also authorise the government to take certain actions, including the selling of goods, to recover unpaid cost recovery charges. The department advised that the proposed cost recovery provisions adhere to the Australian Government's *Cost Recovery Guidelines*.⁸⁵ As the committee was informed, cost recovery extends only to the cost of biosecurity services. It does not include general and unrelated government administrative costs:

Consistent with the Australian Government cost recovery policy, the Department recovers the costs of biosecurity activities from recipients of the activity. Those that create the risk or need for regulation are charged the cost of the activity. Other costs that are not related to the provision of cost

85 Biosecurity Bill 2014, explanatory memorandum, p. 345.

recovered activities, and those mandatory functions due to the Department being a government entity, are funded by government.⁸⁶

2.77 The NFF noted its support for the proposed sale of withheld goods to recover unpaid fees.⁸⁷ While not necessarily supporting the policy to transfer cost to industry, both the CBFCA and the Tasmanian Salmonid Growers Association called for cost-effective and cost efficient, equitable and transparent cost recovery arrangements. Industry consultation was seen as key.⁸⁸

2.78 A number of submitters drew the committee's attention to the fact that there is a public benefit arising from appropriate biosecurity risk management, and submitted that costs should not be borne by industry alone. For example, in relation to Australian forests, the committee heard that plant species in native forests managed by AFPA members are 'prevalent across the landscape and across land tenures in natural forests and urban environments'. Consequently, it was argued that industry should not bear sole responsibility for the costs of plant biosecurity management as 'biosecurity risks and responsibilities are not exclusive to our industry rather there is a significant public good aspect'.⁸⁹ Similarly, Tasmanian Salmonid Growers Association submitted:

TSGA recognises that some fee-for-service activities should occur but primary industry should not be responsible for covering the costs due to the demonstrated public good that biosecurity as to the Australian public.⁹⁰

2.79 The AFPA further noted that, in keeping with the policy intentions underlying the bill, the new biosecurity regulatory framework should result in a more cost efficient regulatory system. The AFPA submitted that these savings should, in turn, be passed on to industry.⁹¹

2.80 In response to the committee's questions, the department advised that it would revise its costings following the implementation of the bill, if passed. Revised costings 'would reflect any reduction in the cost base from savings to regulatory and operational reforms'.⁹²

Committee view

2.81 The committee expects that the cost recovery framework would, should the bills pass, reflect the costs of a modern, efficient regulatory system.

86 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

87 National Farmers' Federation, *Submission 19*, p. 3.

88 Customs Brokers and Forwarders Council of Australia Inc., *Submission 3*, p. 6; Tasmanian Salmonid Growers Association, *Submission 6*, p. 6.

89 Australian Forest Products Association, *Submission 12*, p. 7.

90 Tasmanian Salmonid Growers Association, *Submission 6*, p. 6.

91 Australian Forest Products Association, *Submission 12*, p. 7.

92 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

Proposed coercive powers

2.82 The Law Council of Australia questioned the proposed expanded powers of biosecurity officers.⁹³ Of particular note were the proposed powers to enter and search premises and to seize or destroy material without warrant or the owner's consent.⁹⁴ The council argued that powers to act without warrant or consent are 'extraordinary'. The council also noted with concern the apparent lack of safeguards, including training and qualification requirements, to ensure the powers are only used appropriately. It was recommended that, in line with the safeguards applying to the exercise of coercive powers by the Australian Federal Police, the bill be amended to require a report on the exercise of the powers to be presented to the relevant Minister or to an independent statutory body. Alternatively, Council recommended the bill be amended to allow an independent statutory body to determine whether powers, where exercised, were used lawfully and proportionately.⁹⁵

2.83 In response, the Department of Agriculture advised that the proposed warrant powers are necessary and proportionate to manage the unique threats posed by biosecurity emergencies.⁹⁶ The department further advised that training programs and guidelines would be available to biosecurity officers, and that biosecurity enforcement officers would be expected to comply with the Australian Government Investigations Standards.⁹⁷ (General training requirements of biosecurity officers are discussed in more detail below.)

Committee view

2.84 The power to enter and search premises, and to seize goods, without the owner's consent or without a warrant is significant, and has the potential to substantially infringe personal rights and liberties. However, in certain circumstances such powers are necessary. The committee accepts that the ability to quickly enter premises without consent may be an appropriate response to the threats posed by biosecurity emergencies. Yet, the committee does not accept such power should be exercised without scrutiny. Disclosure of any such use of the coercive powers proposed under the bill is necessary to ensure a transparent and proportionate regulatory system. The committee agrees with the Law Council of Australia that it would be appropriate that each instance of the use of powers—to enter and search premises without warrant or consent or to seize material without warrant or consent—be reported to the Minister and to Parliament.

Recommendation 10

93 Law Council of Australia, *Submission 21*, pp 7—9.

94 The Law Council of Australia in particular commented on clauses 470, 515, 545, 546 and 548.

95 Law Council of Australia, *Submission 21*, p. 8.

96 Department of Agriculture and Department of Health, *Submission 15*, pp 16—17.

97 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

2.85 The committee recommends the Biosecurity Bill 2014 be amended to require that the use of powers to enter and search premises without warrant or consent and to seize or destroy goods without warrant or consent to be reported to the Minister and to Parliament.

Proposed offences

2.86 Submitters did not fail to notice what the department characterised as 'improved compliance tools that are fit for purpose, modern and useful'.⁹⁸ In particular, submitters noted the proposed introduction of strict liability offences and increased penalty levels.

2.87 The Law Council of Australia criticised proposed offences with penalty levels that would exceed the penalties for similar offences in existing Commonwealth legislation. In particular, the council noted clause 69, which would create the offence of failing to provide prescribed contact information. The offence would carry a penalty of imprisonment for 12 months, 60 penalty units or both. The council advised that this penalty level exceeds that of similar offences under the *Australian Federal Police Act 1979*.⁹⁹ The explanatory memorandum does not provide information about the proposed penalty.¹⁰⁰

2.88 The bill also contains several strict liability offences; that is, offences for which 'fault' does not apply.¹⁰¹ As the CBFCA noted, these offences signal a 'change in the department's compliance posture'.¹⁰² Broadly, there were three concerns with the proposed use of strict liability offences.

2.89 First, submitters questioned whether strict liability is generally an appropriate deterrence mechanism. The Law Council of Australia argued that strict liability is a significant departure from normal Commonwealth practice, particularly for offences relating to non-compliance or failure to provide documentation.¹⁰³ The Council also advised that, at times, justification provided in the explanatory memorandum misrepresents the views of third parties such as the Commonwealth Ombudsman.¹⁰⁴

2.90 Second, submitters highlighted proposed offences that would apply to persons with communication difficulties. Clause 58 was of particular note. This clause would create the strict liability offence of failing to comply with a direction. The Law

98 Department of Agriculture and Department of Health, *Submission 15*, p. 7.

99 Law Council of Australia, *Submission 21*, p. 12.

100 Biosecurity Bill 2014, explanatory memorandum, p. 110.

101 A person commits a strict liability offence if he or she undertakes the prohibited conduct or action irrespective of whether the person did so knowingly, intentionally, or recklessly (the *Criminal Code*, s. 6.1). The defence of reasonable mistake of fact would apply, providing the opportunity for the person to demonstrate that he or she had considered relevant facts and acted under a mistaken but reasonable belief about those facts (the *Criminal Code*, s. 9.2).

102 Customs Brokers and Forwarders Council of Australia Inc, *Submission 3*, p. 5.

103 Law Council of Australia, *Submission 21*, pp 12—13.

104 Law Council of Australia, *Submission 21*, p. 12.

Council of Australia submitted that in this instance the use of strict liability would be inappropriate as it would unreasonably increase biosecurity officers' powers of control, search, monitoring and questioning.¹⁰⁵

2.91 In respect of clause 58, the explanatory memorandum advises that 'special protections' would be provided to children and 'individuals who may be temporarily incapable of understanding requirements or complying with a measure due to illness'.¹⁰⁶ Specifically, it advises that such 'incapable persons' or children would not be subject to the requirement to provide information 'unless an officer has taken reasonable steps to contact a parent, guardian or next of kin'.¹⁰⁷ The explanatory memorandum does not comment on the potential liability of persons who do not otherwise understand directions, for example due to language barriers. In its consideration of the bill, the Senate Standing Committee for the Scrutiny of Bills observed that strict liability offences are appropriate in some circumstances, but asked the Minister for Agriculture to provide 'a fuller justification of the application of strict liability in this instance', stating that:

[It] is possible that persons subject to requirements to answer questions may have recently arrived in Australia and may also be suffering from an illness, there may be instances where they are not reasonably able to comply with a request to answer questions or provide information as required.¹⁰⁸

2.92 While not noted by submitters to the inquiry, the committee is aware that a similar situation would arise under clause 46. This clause would create a civil penalty for failing to comply with certain entry and exit requirements. An individual may still contravene entry and exit requirements even if the individual is unable to comply. The explanatory memorandum does not provide an explanation, or a justification, for this proposal. At the hearing, the Department of Agriculture provided the following advice:

[S]ubsection (4) of section 46 has the keywords 'may contravene'...We have been interpreting the law and those kinds of phrases for a long time.¹⁰⁹

2.93 At the committee's request, the department outlined a potential scenario:

Say, for example, if you are unable to speak the language in which a form was available. We try to make forms available in a wide range of languages, but for the sake of argument, we did not have one in a language. The obligation still exists on the individual to comply with the law even if,

105 Law Council of Australia, *Submission 21*, p. 12.

106 Biosecurity Bill 2014, explanatory memorandum, p. 106.

107 Biosecurity Bill 2014, explanatory memorandum, p. 98.

108 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 2 of 2015*, 4 March 2015, p. 16.

109 Mr Rob Cameron, Assistant Secretary, Health Emergency Management Branch, Department of Health, *Committee Hansard*, 11 February 2015, p. 2.

despite best efforts, the requirement is unable to be met. Again, the key phrase there is 'may', so there is an element of discretion.¹¹⁰

2.94 Third, the CBFCA argued there is a significant need for the Government to widely disseminate information about the proposed offences, as service providers can otherwise rely on information provided by third parties:

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.¹¹¹

2.95 The CBFCA's concern that proposed penalties may not be appropriate for persons relying on third party information was also noted in relation to clauses 532 and 533. These clauses would create civil penalties for knowingly providing false or misleading information or documents. The council particularly noted that third parties, such as customs brokers, act in good faith on information provided.

2.96 In response, the Department of Agriculture advised that the civil penalty is designed to target behaviours undertaken knowingly, and further stated that the defence of reasonable mistake of fact may be available.¹¹²

Committee view

2.97 Deterrence is a necessary component of any effective regulatory system. The committee agrees with the Department's advice that penalties must be proportionate, balanced, consistent and based on the level of presented risk. However, it is unclear whether this balance has been achieved in every case.

2.98 In some cases, such as in relation to clause 140, the proposed departure from the Commonwealth standard has been explained in relation to the likely resulting biosecurity hazard. However, in other cases, such as the proposed offence in clause 69, the decision for penalties to exceed those that currently apply to similar offences in Commonwealth legislation has not been well explained. All departures from Commonwealth norms must be justified. Such justification must be included in

110 Mr Cameron, Department of Health, *Committee Hansard*, 11 February 2015, p. 2.

111 Customs Brokers and Forwarders Council of Australia Inc, *Submission 3*, p. 5.

112 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

the explanatory memorandum. The committee also notes the extensive comments of the Senate Standing Committee for the Scrutiny of Bills following its review of the bills. These comments include concerns with the penalty levels for some of the proposed offences and civil penalties. The committee draws these concerns and the Minister's response when it is provided, to the Senate's attention.¹¹³

2.99 The use of strict liability is a significant departure from Commonwealth standards. While permissible, it should not be undertaken lightly. The strict liability offences would not only apply to industry, but to ordinary Australian citizens and foreign tourists. These are serious offences with serious penalties. Their purpose is to create a safe Australia, not to catch people unawares. Information is key. It is incumbent upon government to disseminate well targeted, clear and thorough information about Australia's biosecurity requirements and the offences that may apply.

2.100 The committee remains concerned that the strict liability offences are inappropriate for persons who are unable to communicate with biosecurity officers or understand instructions. The committee seeks assurances that all necessary steps would be taken to ensure information is appropriate for foreign nationals and persons with disabilities. The department should arrange advice sheets appropriate for persons with disabilities and persons from non-English speaking backgrounds.

2.101 The committee also notes the proposed civil penalty under clause 46, under which a person may still be liable despite being incapable of complying with directions. The integrity of this scheme would rely on the training, patience and common sense of biosecurity officers. It is vital that biosecurity officers routinely undertake cross-cultural and customer service training, and have all necessary support to be equipped to exercise sound judgement in all situations.

2.102 The concerns put forward by the CBFCA highlight the novelty of the proposed enforcement regime. There is evident confusion about how the offences and civil penalties will work in practice. This is all the more reason for government to provide clear guidance to industry. This committee's inquiry has brought to light particular offences, and aspects of offences, that need to be explained. For example, advice could usefully explain the concept of *knowingly*, as opposed to inadvertently, providing false information.

Recommendation 11

2.103 The committee recommends that the Department of Agriculture and the Department of Health ensure that advice sheets about the proposed new biosecurity requirements, and related offences, are available and appropriate for people with disabilities and people from non-English speaking backgrounds.

Recommendation 12

113 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 2 of 2015*, 4 March 2015, pp 11–27.

2.104 The committee recommends that the Department of Agriculture and the Department of Health develop guidance material to facilitate industry's transition to the proposed new compliance regime.

Concerns with the implementation of a new regulatory system

2.105 Submitters raised the following issues relevant to the implementation of a new biosecurity regulatory system:

- cross-jurisdictional coordination; and
- the qualifications and training of biosecurity officers.

Co-ordination between Commonwealth agencies and the states and territories

2.106 Four government departments would have responsibilities under the proposed bill: the Departments of Agriculture, Environment, Foreign Affairs and Trade, and Health.¹¹⁴ In addition, the Immigration and Border Protection Portfolio has responsibilities under the proposed package of legislation, and worked with the Department of Agriculture in the development of the bill.¹¹⁵ Relatedly, one submitter in particular was critical of the fact that the Minister for the Department of the Environment was not specifically mentioned in the bill.¹¹⁶

2.107 The proposed bill also touches upon a number of state responsibilities. The committee heard that there may be areas where commonwealth and state responsibilities conflict, or at least overlap, and it is important that appropriate coordination occurs to ensure that biosecurity risks are managed appropriately.

2.108 The NSW Natural Resources Commission noted that an intergovernmental agreement, as permitted by the bill, could be used to ensure adequate surveillance to quickly identify and manage new incursions of invasive species:

[T]he Commonwealth should support devolved, regionalised arrangements that have sufficient funds to tackle the new incursions expeditiously and seriously. These arrangements should be consistent across Australia with strong data sharing arrangements to support rapid response.¹¹⁷

2.109 Australian Pork Limited noted that the proposed expansion of the Commonwealth's ability to declare biosecurity emergencies and zones may result in a shift from state managed responses to national management. This may be a positive development for large multi-state responses, but might create a source of tension for smaller emergencies, especially if a particular state wanted to respond to an emergency differently to the Commonwealth.¹¹⁸ Nevertheless, Australian Pork Limited expressed confidence that the new powers proposed by the bill would

114 Department of Agriculture and Department of Health, *Submission 15*.

115 Immigration and Border Protection Portfolio, *Submission 20*, p. 1.

116 Invasive Species Council, *Submission 16*, p. 3. See also, Dr Sophie Riley, *Submission 4*, p. 4.

117 New South Wales Natural Resources Commission, *Submission 9*, p. 2.

118 Australian Pork Limited, *Submission 17*, p. 2.

'complement' existing cooperative arrangements, such as the Emergency Animal Disease Response Agreement, 'rather than hinder them'.¹¹⁹

2.110 The AFPA approved recent investment in pest trapping programs at ports, but observed that given the large number of organisations at the state and federal level involved in such programs there is a risk that important information might not be shared with all relevant organisations. The AFPA suggested that the bill or regulations be amended to enable important information relating, for example, to research findings or new trapping methodologies to be shared with all stakeholders.¹²⁰

2.111 The committee heard that there are well established coordination processes in place between the Commonwealth and the states and territories. The department advised that the bill would promote further collaboration, and the Commonwealth would 'continue to encourage the States and Territory governments to provide input and feedback in the development of delegated legislation and administrative practices, as appropriate'.¹²¹

2.112 Submitters commented that adequate funding is crucial to managing biosecurity risk, and to ensure that states and territories can take appropriate action. The NFF observed a decrease in government funding to assist industry in the area of disease surveillance and control.¹²² The NFF asked the committee to:

seek clarity on how the Federal Government intends resourcing its responsibilities under the new legislation and under what agreements the Federal and jurisdictional governments will ensure co-operation in pooling their resources to maximum effect.¹²³

2.113 In response, the department advised that '[t]here are no proposals to amend existing funding arrangements with regard to biosecurity emergencies'.¹²⁴

Committee view

2.114 For the bill to operate as intended there must be cooperation between the various relevant Commonwealth departments, and between the Commonwealth, the states and the territories. The committee is satisfied that the bill has been drafted with cross-jurisdictional challenges in mind and that cooperation will occur.

The qualifications and training of biosecurity officers

2.115 This section elaborates on the comments made earlier in this chapter in relation to the qualifications of officers exercising coercive powers earlier. The

119 Australian Pork Limited, *Submission 17*, p. 2.

120 Australian Forest Products Association, *Submission 12*, p. 5.

121 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

122 See also, NSW Farmers' Federation, *Submission 27*, pp 6–7.

123 National Farmers' Federation, *Submission 19*, p. 3.

124 Department of Agriculture, answers to questions on notice, 11 February 2015 (received 27 February 2015).

committee heard that the effectiveness of the new risk security framework is based on the skills of biosecurity officers within the Department of Agriculture. For this reason, a number of submitters called for greater investment in skills and training.

2.116 For example, the Plant Biosecurity Cooperative Research Centre called for a significant increase in government investment in biosecurity science and training, observing that:

Currently, many frontline biosecurity officers have little biological training – their major responsibilities related to checking that importers, passengers and others are following pre-set standard rules and procedures. Under a more flexible arrangement they will face more complex situations, sometimes with different considerations being required for the same commodity. The move to a risk based approach will require a very significant investment in training of officers involved in frontline biosecurity activities to ensure that they can deal with this increased complexity and can recognise when things go wrong.¹²⁵

2.117 The Australian Veterinary Association called for recognition in the bill when a biosecurity officer is required to have the particular skills of a veterinarian.¹²⁶

2.118 The committee asked the departments to comment on the training and qualifications necessary for a person to become a biosecurity officer, human biosecurity officer and biosecurity enforcement officer. In relation to biosecurity officers, the departments advised:

Powers under the legislation will be exercised by appointed biosecurity officers (see clause 545) who have the appropriate training and knowledge to recognise biosecurity risks and manage them appropriately—supported by extensive technical, policy and scientific expertise.¹²⁷

2.119 The department did not mention any particular specialist qualifications, however did note that staff also undertake 'staff training' and 'competency based assessments'.¹²⁸

2.120 The bill provides that Human Biosecurity Officers would need to have appropriate clinical experience and also be an employee of either the Commonwealth Department of Health, a state or territory counterpart or be a member of the Australian

125 Plant Biosecurity Cooperative Research Centre, *Submission 18*, p. 2. *Note*: this organisation supports the move to a risk based approach from a rule based approach, but noted that the success of this transition depends on the skills of officers, and suggested amendment to the bill.

126 Australian Veterinary Association, *Submission 10*, Appendix A, p. 3.

127 Department of Agriculture and Department of Health, answer to question on notice, 11 February 2015 (received 27 February 2015), Question 13.

128 Department of Agriculture and Department of Health, answer to question on notice, 11 February 2015 (received 27 February 2015), Question 13.

Defence Force.¹²⁹ The departments advised that Human Biosecurity Officers would also be required to complete training in human biosecurity.¹³⁰

2.121 Under the bill, Biosecurity Enforcement Officers would be required to meet the requirements of the Australian Government Investigations Standards. The departments advised that:

This includes the requirement that staff involved in investigations meet minimum levels of training or qualifications and that the department meets the minimum standards for effective and efficient management of investigations, including record keeping.¹³¹

Committee view

2.122 The committee agrees that the success of the new scheme proposed by the bill is dependent in large part upon the skill and expertise of biosecurity officers within the Department of Agriculture. The committee notes the department's assurances that adequate support and training will be provided to officers, and will be following this issue closely as part of the committee's general oversight of the department.

Consultation process conducted by the Department of Agriculture

2.123 Submitters drew the committee's attention to two aspects of the consultation process. First, submitters commented on opportunities to contribute to the development of the Biosecurity Bill 2014 and related bills. Second, submitters noted concerns with the anticipated consultation process for the proposed regulations and other subordinate legislation.

Consultation on the Biosecurity Bill 2014 and related bills

2.124 Submitters emphasised that the bill is the culmination of several years' work. The Department of Agriculture and the Department of Health advised that consultation on the development of legislation to replace the Quarantine Act commenced in 2009.¹³² The committee was informed that the consultation processes varied, and included 'workshops, roundtables, industry fora, international meetings, online blogs, submissions and meetings across the country.'¹³³ Additionally, the department established an industry legislation working group, comprising 16 industry representatives,¹³⁴ which 'provided substantial input into the development of the bill

129 Clause 564, Biosecurity Bill 2014.

130 Department of Agriculture and Department of Health, answer to question on notice, 11 February 2015 (received 27 February 2015), Question 13.

131 Clause 546, Biosecurity Bill 2014. See also Department of Agriculture and Department of Health, answer to question on notice, 11 February 2015 (received 27 February 2015), Question 13.

132 Department of Agriculture and Department of Health, *Submission 15*, p. 13.

133 Department of Agriculture and Department of Health, *Submission 15*, p. 13.

134 Department of Agriculture and Department of Health, *Submission 15*, p. 13.

since its inception in 2009.¹³⁵ In all, approximately 440 organisations were consulted throughout the bill's six-year formation.¹³⁶

2.125 Submitters recognised that consultation for the 2014 draft legislation is in addition to consultation on the Biosecurity Bill 2012 (the 2012 Bill).¹³⁷ The majority of submitters expressed satisfaction with the level of consultation undertaken by the department. Industry representatives advised they had been provided extensive opportunities for input.¹³⁸ Ports Australia submitted that the consultation process for the 2012 Bill was 'excellent', while the NFF acknowledged:

[the] extensive process the Department of Agriculture...has undertaken in putting together the Biosecurity Bill 2014. NFF also appreciates being involved through its representation on the Industry Legislation Working Group established by DAFF for use as a sounding board during the early parts of the drafting process.¹³⁹

2.126 Several submitters highlighted legislative changes that had been made in response to stakeholder feedback. It was acknowledged that the consultation processes had helped shape the bill.¹⁴⁰ For example, Ports Australia advised that 'input on relevant parts of the draft legislation received a good hearing and, in many cases, amendments were implemented as a result of reasoned arguments'.¹⁴¹

2.127 However, the committee was informed that industry was not notified of key changes to the draft legislation. There was evident uncertainty about the precise differences between the 2012 Bill and the Biosecurity Bill 2014, with a number of organisations submitting that the publicly available information was insufficient.¹⁴² Significantly, the Australian Industry Working Group on Biosecurity advised that 'members have expressed concern at the apparent lack of consultation with industry relating to the last-minute changes to the bill'.¹⁴³ The committee was also informed the industry was provided limited access to the draft 2014 bill.¹⁴⁴

135 Australian Industry Working Group on Biosecurity, *Submission 24*, p. 1.

136 Department of Agriculture and Department of Health, *Submission 15*, p. 13.

137 See, for example, Australian Chicken Meat Federation, *Submission 7*, p. 2.

138 See, for example, Ports Australia, *Submission 1*, p. 2; Australian Chicken Growers Council Ltd, *Submission 7*, p. 1; Tasmanian Salmonoid Growers Association Ltd, *Submission 6*, p. 3.

139 National Farmers' Federation, *Submission 19*, cover letter.

140 See, for example, Australian Industry Working Group on Biosecurity, *Submission 24*, p. 1.

141 Ports Australia, *Submission 1*, p. 1.

142 AUSVEG, *Submission 8*, p. 2; Invasive Species Council, *Submission 16*, p. 2, Australian Horticultural Exporters Association, *Submission 28*, p. 2.

143 Australian Industry Working Group on Biosecurity, *Submission 24*, p. 1.

144 Mr Richard Stoklosa, *Submission 26*, p. 1; Australian Horticultural Exporters Association, *Submission 28*, p. 2.

2.128 The departments advised the committee that consultation would continue, noting that 'there will be more opportunities to discuss feedback and work with stakeholders in the development of regulations and administrative policies'.¹⁴⁵

Regulations

2.129 There was evident concern with the consultation process for the draft subordinate legislation. Industry's message was uniform and clear: meaningful, thorough and genuine consultation is required. Industry representatives routinely noted that the operational details of the proposed new biosecurity system will be contained in subordinate legislation.¹⁴⁶ As Ports Australia noted, 'the details and the certainty upon which industry will rely will be found in the regulations'.¹⁴⁷ Unfortunately, the proposed regulations were not available to the committee for review or to stakeholders for comment. This was a significant concern for industry.¹⁴⁸

2.130 The Australian Chicken Growers Council advised that the failure of the government to provide the draft regulations made 'it difficult for stakeholders to provide in-depth comments that address how the legislation will operate as a whole'. This concern was shared by other industry representatives, including the Australian Chicken Meat Federation which noted that the 'staggered process of drafting and releasing the new legislative framework does not allow stakeholders to consider the new system as a whole before the bills are considered by Parliament'.¹⁴⁹

2.131 The NFF sought assurances from the government that 'industry will be closely involved in the drafting of the regulations and other supporting documents'.¹⁵⁰ Similar assurances were sought by numerous industry sectors, including the Australian chicken meat industry, the Australian pork industry, the horticultural sector and the shipping industry.¹⁵¹ Industry consultation was considered necessary to ensure regulations are both practical and align with industry expectations. As the Australian Chicken Growers Council argued, robust and meaningful consultation is necessary 'to ensure that they [the regulations] will meet the expectations of industry and prevent the formulation of legislation that is burdensome to industry'.¹⁵²

145 Department of Agriculture and Department of Health, *Submission 15*, p. 14.

146 See, for example, NSW Farmers' Association, *Submission 27*, p. 8; Australian Horticultural Exporters Association, *Submission 28*, p. 4.

147 Ports Australia, *Submission 1*, p. 1.

148 See, for example, AUSVEG, *Submission 8*, p. 2; Tasmanian Salmonid Growers Association, *Submission 6*, p. 3; Australian Banana Growers Council Inc., *Submission 13*, p. 1; Australian Horticultural Exporters Association, *Submission 28*, p. 4.

149 Australian Chicken Meat Federation Inc., *Submission 7*, p. 2.

150 National Farmers' Federation, *Submission 19*, p. 3.

151 See, for example, Australian Chicken Meat Federation, *Submission 7*, p. 2; Australian Pork Limited, *Submission 17*, p. 1; Food and Beverage Importers Association, *Submission 22*, p. 3; Shipping Australia Ltd, *Submission 23*, p. 2; Australian Banana Growers Council Inc., *Submission 13*, p. 1; Australian Horticultural Exporters Association, *Submission 28*, p. 4.

152 Australian Chicken Growers Council, *Submission 7*, p. 2.

2.132 In response to these concerns the department acknowledged the need for consultation, advising that 'when we draft regulations we also consult.'¹⁵³ The department advised that stakeholders would be consulted on the development of the regulations.¹⁵⁴ The committee was further reminded of the parliamentary disallowance process for regulations, and advised that this process provides sufficient opportunity to scrutinise subordinate legislation.¹⁵⁵

Committee view

2.133 Indubitably, the department has conducted extensive consultations with key stakeholders in relation to the current bill and earlier iterations. The department is also preparing to consult with stakeholders as it develops the regulations. However, the committee has received evidence that these consultations do not always correlate to changes to the bill to reflect the issues raised and some consultations appear to be rushed.

Recommendation 13

2.134 The committee recommends that the Department of Agriculture continue to consult closely with all relevant stakeholders and ensure that stakeholders are provided sufficient time to consider and respond to proposed regulations.

Conclusion

2.135 All Australians benefit from a robust, independent and scientifically informed biosecurity system. The Quarantine Act has served Australians well, and has contributed to Australia's strong biosecurity framework. However, the world has changed since the early twentieth century and it is time for an update. The Quarantine Act has been amended more than fifty times and has become outdated, difficult to administer and interpret, and unable to respond to current needs. The bills before the committee seek to bring about the reforms necessary for a first-class biosecurity system to protect Australia's future.

2.136 The package of biosecurity bills reflects the work of many years, originating with the Beale Review. The committee commends the Departments of Agriculture and Health for their careful work developing the bills and consulting with stakeholders. The committee also notes the contributions made by industry, state and territory governments, and other stakeholders during consultations on the bill and submissions to inquiries conducted by parliamentary committees.

2.137 The committee notes that the bills are not perfect, and there are areas that the government can improve, particularly in relation to consultation and timely release of draft regulations. The bills before the committee are draft 'framework' legislation. That is, they would provide the broad principles and the general framework for Australia's

153 Ms Mellor, Department of Agriculture, *Committee Hansard*, 11 February 2015, p. 9.

154 Ms Mellor, Department of Agriculture, *Committee Hansard*, 11 February 2015, p. 9.

155 Ms Mellor, Department of Agriculture, *Committee Hansard*, 11 February 2015, p. 8.

biosecurity scheme but would leave the scope and operational details to delegated legislation. The committee reiterates the view of the Senate Standing Committee for the Scrutiny of Bills that such legislation is 'inherently problematic from the point of view of effective Parliamentary scrutiny, and avoids detailed parliamentary debate of the content of important provisions'.¹⁵⁶ The committee also notes that the bill contains 21 clauses or subclauses that would provide for regulations that would in turn be exempt from disallowance pursuant to section 42 of the *Legislative Instruments Act 2003* (Cth).¹⁵⁷

2.138 Pleasingly, the departments have taken the opportunity to amend the bill to reflect feedback provided through consultations on the 2012 package of bills. On balance, the committee believes that the Biosecurity Bill 2014 and related bills propose a comprehensive modernisation of the Australian biosecurity legislation.

Recommendation 14

2.139 Subject to the foregoing recommendations, the committee recommends that the Senate pass the Biosecurity Bill 2014 and related bills.

**Senator the Hon Bill Heffernan
Chair**

156 Senate Standing Committee for the Scrutiny of Bills, *Inquiry into the future directions and role of the Scrutiny of Bills Committee*, 30 November 2011, p. 33.

157 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 2 of 2015*, 4 March 2015, p. 11. The explanatory memorandum states the exemption is necessary to ensure that expert decision-makers can manage biosecurity risks effectively.

Labor Senators' Dissenting Report

Biosecurity Bill 2014

1.1 Labor Senators do not agree with clause 567 of the Biosecurity Bill 2014 that provides the Agriculture Minister with review powers that will allow him to conduct reviews into the biosecurity system to identify opportunities for improvements in the assessment and management of biosecurity risks.

1.2 Labor Senators also do not agree with clause 643 – Delegation of powers by Agriculture Minister. This clause allows the Agriculture Minister to delegate any or all of his or her powers and functions under the Act (and any regulations made under the Act) to the Director of Biosecurity, an SES employee, or acting SES employee in the Agriculture Department, except for those relating to the Minister.

1.3 Labor Senators acknowledge concerns raised by submitters regarding the proposed review process under clause 567 and 643. The proposed review process was condemned as a ‘backwards’ and ‘retrograde’ step that would potentially allow conflict of interests.

1.4 Submitters highlighted key differences between the Biosecurity Bill 2014 clauses 567 and 643 and the review process designed under the Inspector-General of Biosecurity Bill 2012. Specifically, submitters noted with concern the proposed discretionary timing, conduct and scope of the reviews and the internal, confidential nature of review findings would not guarantee independent transparent review for example, the Australian Veterinary Association stated:

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.¹

1.5 AUSVEG stated:

Clause 567 states that “... as the review powers are provided to the Minister, reviews will be conducted independently from the Department, ensuring independence between the subjects and the review (biosecurity officials) and the powers of the person conducting the review.” However, as the powers for conducting a review into the biosecurity system lie with the Minister for Agriculture and may be conferred by the Minister for Agriculture, this cannot legitimately be described as an independent review process.²

1.6 Labor supports option 2 of the Regulation Impact Statement that determined establishing the role of the Inspector-General of Biosecurity through legislation as a statutory officer, responsible for reviewing the performance and exercise of powers by the Director of Biosecurity, biosecurity officers and biosecurity enforcement officers as well as conducting biosecurity import risk analysis (BIRAs).

1 Australian Veterinary Association, *Submission 10*.

2 AUSVEG, *Submission 8*.

1.7 This is the preferred option as it would help assure stakeholders and Australia's trading partners of the integrity of the department's processes and would provide an independent, systematic approach towards maintaining and improving Australia's biosecurity system.

1.8 Labor recommends that the Government adopt the recommendation of the Beale review to establish the Inspector-General of Biosecurity as a statutory body.

1.9 Establishing the role of the Inspector-General of Biosecurity through legislation would ensure that there is a statutory officeholder responsible for the independent audit, review and assessment of the department's biosecurity activities and processes. The role and function of the Inspector-General of Biosecurity would align with the Beale Review's recommendation that an effective risk management system should include formal auditing activities.

Recommendation 1

That the Senate either amend the Bill or request the House of Representatives to amend the Bill to provide for establishment of the Inspector-General of Biosecurity as a statutory body.

**Senator Glenn Sterle
Deputy Chair**

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**

Appendix 1

Submissions received

| Submission Number | Submitter |
|--------------------------|---|
| 1 | Ports Australia |
| 2 | Australian Chicken Meat Federation Inc |
| 3 | Customs Brokers and Forwarders Council of Australia Inc |
| 4 | Dr Sophie Riley |
| 5 | Cherry Growers Australia |
| 6 | Tasmanian Salmonid Growers Association |
| 7 | Australian Chicken Growers Council Ltd |
| 8 | AUSVEG |
| 9 | NSW Natural Resources Commission |
| 10 | Australian Veterinary Association |
| 11 | Australian Shipowners Association |
| 12 | Australian Forest Products Association |
| 13 | Australian Banana Growers' Council |
| 14 | Australian Honey Bee Industry Council |
| 15 | Department of Agriculture and Department of Health |
| 16 | Invasive Species Council |
| 17 | Australian Pork Limited |
| 18 | Plant Biosecurity Cooperative Research Centre |
| 19 | National Farmers' Federation |
| 20 | Immigration and Border Protection portfolio |
| 21 | Law Council of Australia |
| 22 | Food and Beverage Importers Association |
| 23 | Shipping Australia Limited |
| 24 | Australian Industry Working Group on Biosecurity |
| 25 | Australian Petroleum Production and Exploration Association |
| 26 | Mr Richard Stoklosa |
| 27 | NSW Farmers' Association |
| 28 | Australian Horticultural Exporters Association |
| 29 | Mr Shane Bosma |

Additional information received

- Received on 27 February 2015, from the Department of Agriculture. Answers to Questions taken on Notice on 11 February 2015.
- Received on 27 February 2015, from the Department of Agriculture and Department of Health. Answers to written Questions taken on Notice on 11 February 2015.

Appendix 2

Public hearings and witnesses

11 February 2015, Canberra, ACT

- CAMERON, Mr Rob, Assistant Secretary, Health Emergency Management Branch, Department of Health
- DUTHIE, Ms Kristen Director, Biosecurity Regulation and Reform Policy Branch, Service Delivery Division, Department of Agriculture
- HOLMES, Ms Patricia, Assistant Secretary, Trade Law Branch, Office of Trade Negotiations, Department of Foreign Affairs and Trade
- LANGFORD, Ms Debbie, Assistant Secretary, Biosecurity Regulation and Reform Policy Branch, Service Delivery Division Service Delivery Division, Department of Agriculture
- MELLOR, Ms Rona, Deputy Secretary, Department of Agriculture
- OXLEY, Mr Stephen, First Assistant Secretary, Wildlife, Heritage and Marine Division, Department of the Environment
- WIBLIN, Mr James Francis, Director, Food Trade and Quarantine, Department of Foreign Affairs and Trade
- WILLIAMSON, Mr Greg, First Assistant Secretary, Service Delivery Division, Department of Agriculture

