

THE PRIMARY REPORT

AN ANALYSIS OF ISSUES AFFECTING THE RURAL ECONOMY BY NSW FARMERS' ASSOCIATION

November 2006

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Strategic Imperative for Quarantine

The NSW Farmers' Association believes there are flaws in AQIS, Biosecurity Australia and the Australian Quarantine system which inhibit a strategic approach to quarantine.

The evidence for a strategic imperative comes from 10 years of quarantine breaches or exposés, failure of Government to adopt recommendations from its own review processes, and recently, failure to transparently and genuinely collaborate with farmers and other Australians to improve the quarantine system.

Australians know that protection, from exotic pests and diseases, for our community and economy is critical. They expect the efforts which have excluded foot and mouth disease, "mad cow" disease and avian influenza are best practice. They also expect these efforts reflect activities against important pests and diseases which they do not know about that could change their way of life.

Australians have high expectations of quarantine maintaining quality of life. The Australian Quarantine Inspection Service ("AQIS") campaigns and news reports of diseases such as avian influenza keeps the awareness of quarantine extraordinarily high. This awareness reflects a sensitised community accustomed to protection from major pest and disease threats.

Agricultural industries are at the forefront of efforts to maintain a strong quarantine system. The value of agricultural production exported in 2005-6, estimated at \$28 billion¹, would be decimated if Australia became infested with pests or disease. The loss in production value would occur through a loss of market share, loss of premium price and uncompetitive high costs of production.

¹Commonwealth of Australia, 2006, Australian Commodities 06.2 June Quarter, ABARE project 1163.
http://www.abareconomics.com/interactive/AC_june_2006/pdf/AC_june06_PartA.pdf (accessed 8 August 2006)

Broad, Independent and Transparent Review

Agriculture's concerns have been brought to the Government's attention in meetings with the NSW Farmers' Association (the "Association"). The broader industry has been consulted through the National Farmers' Federation ("NFF") and a Forum on quarantine, hosted by the NFF and Government in July 2006.

The Association is frustrated with the lack of acknowledgement of the full range of concerns. There is no acknowledgment of a crisis of competence; instead the Government refers to a crisis of confidence in the system.

The Department of Agriculture, Fisheries and Forestry ("DAFF") has reviewed the Import Risk Analysis ("IRA") process. However, industry issues are broader than the IRA process managed by Biosecurity Australia ("BA"). They also cover AQIS, the organisational structures within DAFF and the Quarantine Act.

The Government's proposed solution to a "crisis of confidence" is through improved communication with stakeholders, a simplified IRA process and the AusBIOSEC policy for national operational collaboration in primary production and environment sectors.

The only industry scrutiny of performance in quarantine is through industry membership of the Quarantine and Export Advisory Council (QEAC) which receives information from the agencies. However, their findings remain confidential to the Minister.

The Association has lost confidence that the internal DAFF review of the IRA process will satisfy industry concerns, as it has been designed and defended by that same Department. Accordingly a unanimous resolution was passed at the Association's Annual Conference which call for a Senate Inquiry.

The Association, representing all agricultural industries and over 11,000 farmers in NSW, is seeking a broad, independent and transparent review. The scope requested for the inquiry covers AQIS, BA and Australia's quarantine system.

An independent and transparent review allows consumers, scientists, lawyers, economists, and specialists in human health, social science and trade, to express the diversity of interests needed in planning for this community asset. The review must be distanced from DAFF and in order to provide stakeholders with transparency.

The Association believes a review offers the pathway to resolving the quarantine crisis and ensuring a strategy for the future.

The Goal of Quarantine

The Government's quarantine goal is "biosecurity risk from imported product being managed rather than excluded"².

Industry acknowledges this as a reasonable goal given the volume of imported goods and human movements through airports and the emergence of never before seen diseases.

However, various commodities and governments have wide ranging views on where the optimum balance lies between preserving our pest and disease status and importing product to expand consumer choice and lower price. Therefore, it follows that the community needs to be convinced that Government organisations can manage the biosecurity risk at any level of trade.

Risk management is applied in many industries that cannot achieve zero risk, through pursuing a culture of quality assurance. This is the culture that needs to be completely embraced by our quarantine agencies, BA and AQIS.

Analysis by Professor Malcolm Nairn 1997

In 1996, public unrest about quarantine lead the Government to commissioning Professor Malcolm Nairn to conduct another review of quarantine.

On nearly every page of the Nairn report³ the author talks about "changing the culture" of AQIS. Hints to Nairn's concerns over culture are found in the solutions he proposes for quarantine. (These have been adapted by the Association to include the policy arm of BA for this report):

- very close links between quarantine recommendation development (BA) and policy implementation (AQIS)
- AQIS and BA be established as one new entity
- the new entity be directly responsible to the Minister for Agriculture Fisheries and Forestry and independent from his Department

- employment be by workplace agreements and performance based
- both a directive and executive management structure based on professional experience be appointed and be responsible to the Minister as defined in enabling-legislation (supported by the Uhrig Review⁴ of 2003 into corporate governance of statutory authorities)
- total quality management approach to BA and AQIS functions
- establish a group to oversee change

Nairn made 109 recommendations in his report. The Association and the NFF had a policy of full compliance with the Nairn report. The Government agreed to all, except the recommendations establishing a statutory authority.

Evidence of a "crisis of competence"

The Hon. Peter McGauran, Federal Minister for Agriculture, Fisheries and Forestry advised the Association in October 2005, there was a "crisis of confidence" in quarantine. This has its origins in a multitude of incidents which are known to the Association in the 10 years since the Nairn Report.

- 1998 - Import of frozen pilchards as aquaculture feed (without any IRA) contained herpesvirus suspected in mass pilchard kills⁵.
- 1995-05 - Criticisms in Apple⁶, Pork⁷ and Banana⁸ IRA Senate Inquiries of lack of on site AQIS certification, poor stakeholder communication, inappropriate weighting of economic consequences and poor procedural documentation.
- 1996-00 - Inadequate science in relation to unjustifiable and inconsistent trade barriers exploited by Canada leading to discrediting of Australian science internationally in the World Trade Organisation (WTO) Salmon IRA dispute.⁹
- 1997 - Poor management of weed seed contamination and sentinel animals for foot and mouth disease (FMD) during quarantining of alpacas on Niue Island Quarantine Station destined for Australia¹⁰.

⁴ Review of the Corporate Governance of Statutory Authorities and Office Holders, John Uhrig, June 2003

⁵http://www.parliament.sa.gov.au/committees/documents/EnviroResDev/public_documents/Completed%20Inquiries/33%20Report%20-%20Pilchard%20Fishery/Pilchard%20Fishery%20REPORT.pdf (accessed 8 August 2006)

http://www.affa.gov.au/corporate_docs/publications/pdf/market_access/biosecurity/animal/finalfinfish.pdf (accessed 8 August 2006)

⁶http://www.aph.gov.au/Senate/committee/rrat_ctte/apples04/report/index.htm (accessed 8 August 2006)

⁷http://www.aph.gov.au/Senate/committee/rrat_ctte/completed_inquiries/2002-04/pork/report/report.pdf (accessed 8 August 2006)

⁸ http://www.aph.gov.au/Senate/committee/rrat_ctte/bananas/report/index.htm (accessed 8 August 2006)

⁹http://www.aph.gov.au/Senate/committee/rrat_ctte/completed_inquiries/1999-02/salmon_final/report/index.htm (accessed 8 August 2006)

¹⁰ Personal communication, 2005, Dr Peter Carter, Chairman, Exotic Disease, Quarantine, Plant and Animal Health Committee, NSW Farmers' Association

² Guidelines for Import Risk Analysis: September 2001 page 18

³ Australian Quarantine a shared responsibility: The Nairn Report, 1997.

- 2000 - Industry had to demand certification by Australian staff of thoroughbreds for import during the UK FMD outbreak¹⁰.
- 2000 - Import policy for raw prawns (which ignored the precautionary principle) failed with the detection of White Spot Syndrome Virus in imports in an aquaculture establishment¹¹.
- 2000 - Small Hive Beetle incursion likely incursion through soil contamination on imported equipment or fruit that was missed on inspection¹².
- 2001 - AQIS controlled container terminal traced as source of fire ant incursion (estimated incursion date in late 1990s)¹³.
- 2002 - Imported grain spillage undetected by AQIS during translocation of grain from Port Melbourne to Melbourne processing plant¹⁴.
- 2003-04 - virus outbreak in Murray Cod and goldfish from inadequate testing of imported ornamental fish (those testing protocols have not yet changed)^{15,16}
- 2004 - Giant African Snail incursion due to inadequate cargo screening program¹⁷.
- 2004 - Criticisms of inadequate performance and auditing of AQIS Compliance unit, National Management Group and Consultative Committee on Emergency Plant Pests in Citrus Canker Senate Inquiry¹⁸.
- 2004 - Imported fruit treatment off shore protocol failure¹⁹
- 2004 - Importation of Brazilian beef due to lack of communication between BA and AQIS about import policy²⁰
- 2005 - Pork IRA legal challenge revealed courts could only judge on whether the authorities followed the process not whether the science was sound²¹.
- 2006 - Alleged imported cut flower on and off shore treatment protocol failure²²

¹¹http://www.affa.gov.au/corporate_docs/publications/pdf/quarantine/qdu/prawn_nerv.pdf (accessed 8 August 2006)

¹² <http://www.abc.net.au/landline/stories/s914429.htm> (accessed 8 August 2006)

¹³ <http://www.monash.edu.au/pubs/monash-news/july-2004/ants.html> (accessed 8 August 2006)

¹⁴ <http://media.jcu.edu.au/story.cfm?id=133> (accessed 8 August 2006)

¹⁵ Personal communication, 2006, Keith Perrett, former Chair Grains Committee, NSW Farmers' Association

¹⁶ Goj, Lancaster M, Deee K, Dhungyel O & Whittington R, 2006, *The molecular epidemiology of iridovirus in Murray cod (Maccullochella peilii) and dwarf gourami (Colisa lalia) from distant biogeographical regions suggests a link between trade in ornamental fish and emerging iridoviral diseases. Molecular Cellular Probes*, 20: 212-22

¹⁷ Stephens FJ, Raidal SR & Jones B, 2004. *Haematopoietic necrosis in a goldfish (Carassius auratus) associated with an agent morphologically similar to herpesvirus. Australian Veterinary Journal* 82:167-169

¹⁸ <http://www.abc.net.au/am/content/2004/s1029679.htm> (accessed 8 August 2006)

¹⁹ http://www.aph.gov.au/Senate/committee/rrat_ctte/citrus_canker/report/index.htm (accessed 8 August 2006)

²⁰ <http://www.anao.gov.au/Website.nsf/NewAuditReports/47648F2BCB22799DCA2570C90007A2AD!OpenDocument> (accessed 8 August 2006)

²¹ <http://www.abc.net.au/news/newsitems/200502/s1302853.htm> (accessed 8 August 2006)

²² <http://www.austlii.edu.au/au/cases/cth/FCAFC/2005/206.html> (accessed 8 August 2006)

²³ Personal communication, 2006, NSW Farmers' Association Horticulture members.

Legislative and organisational shortcomings

Specialist Barrister, Tom Brennan, has provided legal advice to the Association on serious flaws in the quarantine system²³ as follows:

- Quarantine policy is not developed across the spectrum of human, animal and plant quarantine and there is no institutional basis for leading dialogue and thinking on fundamental societal challenges from pest and diseases.
- Effective, efficient and transparent development of policy has been compromised by the failure to develop effective stakeholder relationships and the structural divisions between policy development and operational functions.
- The establishment of BA as a prescribed agency under the Financial Management and Accountability Act has financially separated policy development from operations leaving no capacity for flexible allocation of resources between the two.
- The Quarantine Act does not support the policy mechanisms for AQIS control of the border as there is no recognition in the Act for the AQIS "ICON" database or IRAs. This exposes the Australian Government to extremely high levels of risk of legal challenge by an importer denied a permit and by Australian producers affected by an import. The lack of legal standing under domestic legislation for a scientific assessment which is required under the Sanitary and Phytosanitary agreement also leaves the Government exposed to challenge by members of the WTO.
- The Quarantine Act does not define Australia's Appropriate Level of Protection (ALOP) thus decisions are made on an imponderable legislative standard devoid of meaning.
- There is no provision in the IRA Handbook or the Quarantine Act for any officer of the department to consult the Minister on the societal value judgments involved in the determination of Australia's ALOP and the weighting to be accorded to various forms of harm in assessing the consequences of importation. This exposes officials, Ministers and Australia to unacceptable levels of risk and increases the risks of successful challenge to Australia's quarantine system in the WTO.
- Accountability for the adequacy of scientific analysis in an IRA is spread, without a framework, between the IRA Team, the CEO of BA and the Eminent Scientist Group. Indeed the Eminent Scientist Group can only assess if the IRA has considered the technical submissions of stakeholders rather than comment on the adequacy of the science in the IRA.

²³ Advice to NSW Farmers' Association on legislated structure for Australian Government quarantine agencies, Tom Brennan, 200. http://www.nswfarmers.org.au/rural_issues/quarantine__and__exotic_disease (accessed 8 August 2006)

Government Responses

The Government's response to the incidents in quarantine has been reactionary and piecemeal. There has not been sufficient structural or cultural change despite strategic recommendations made through government endorsed processes such as the Nairn Report and previous Senate Inquiries^{6,7,8}.

The response of creating BA in 2000 within the Market Access area of the then Agriculture Fisheries and Forestry Australia was made after losing a WTO dispute with Canada over salmon imports. BA was to focus on the science of importation policy and to improve consultation with stakeholders. BA rebadged existing AQIS personnel with a separate departmental head.

Then in 2004, to enhance the goal of independence from non scientific influences, simulated by the domestic disputes over Pork, Banana and Apple IRAs, BA was made a prescribed agency within DAFF under the Commonwealth Financial Management and Accountability Regulations Act 1997 (FMARA97).

The change to BA was perceived by Government to address industry's concerns over trade²⁴. However, trade concerns are not those identified in the Association's list above or those listed in the Governments audits^{25,26,27}. Rather, the real concerns are a failure to manage relationships and processes and omissions in the Quarantine Act.

If the Government hoped that BA, as a prescribed agency, would give transparency, accountability and autonomy of quarantine policy development; the only change, has been that the budget is now supplied from Treasury rather than DAFF.

The audits of BA and AQIS^{25,26,27} have shown some improvement in the outputs of both, however failures have been identified in the most recent 2005 audit which can be grouped into poor IRA processes by BA and poor risk assessment by AQIS as follows:

- *Improved stakeholder consultation on IRAs.* However, repeated industry concerns over the arbitrary allocation of numerical ranges for risk categories has not been addressed or indeed formally approved by Government.

²⁴<http://www.affa.gov.au/content/newsmedia.cfm?AreaYear=Department%20of%20Agriculture!%20Fisheries%20and%20Forestry%20-%20Australia2000&ObjectID=3E1CB4A2-71C8-11D5-8F100048548E95BE> (accessed 8 August 2006)

http://www.affa.gov.au/corporate_docs/publications/pdf/biosecurityaustralia/ba_news/banews_18.pdf (accessed 8 August 2006)

²⁵ *Managing for Quarantine Effectiveness, Australian National Audit Office, Audit Report No.47 2000-2001*

²⁶ *Review of Australia's Quarantine Function, Joint Committee of Public Accounts and Audits, Feb 2003*

²⁷ *Managing for Quarantine Effectiveness - Follow up, Australian National Audit Office, Audit Report No. 19 2005-2006*

- *Documentation within the IRA of the range of risk management strategies.* However within the IRAs there is no program for monitoring and evaluation of the effectiveness of the risk management strategies specific to that commodity.
- *Concern over the long waiting list for import requests.* However, major contributors to IRA delays occurs through the tying up staff resources due to appeals and disputes with stakeholders. Peer review by the Eminent Scientists Group to occur in 2007 will minimise this.
- *Criticism for a lack of systematic analysis of risk consequences used to target AQIS resources and inadequate risk profiling of the contents of sea containers.* This despite the Government's stated goal of quarantine being risk management.

The conclusions from independent auditors leave little doubt that the relationship between BA and stakeholders remains extremely poor and that quality assurance of quarantine is compromised.

Essential needs in a Quarantine System

The Association appreciates a review will wish to define what is missing from the present structure and process that threatens the integrity of Australian quarantine.

The Association has refined this list of essential elements to ensure an effective and efficient system of protection:

1. BA and AQIS with very close operational links
2. BA and AQIS staff on performance based Workplace Agreements
3. Improved multidisciplinary analysis within the IRA beyond plant or animal health sciences
4. The scientific scrutiny of an IRAs quality (not only the submissions to the draft IRA) be undertaken by an independent scientific panel;
5. The legal scrutiny of the IRA process by an independent panel;
6. Transparent BA decisions
7. A legal status within our Quarantine Act provided to both the IRAs and ICON database and ALOP
8. Practical and realistic methods of assessing risk and the ALOP
9. The Minister with ultimate responsibility for the decision on an IRA.

Summary

The problems leading to the public outcries over the past decade do not sit comfortably with Government assertions that there is not a crisis of competence with AQIS and BA, merely a crisis of confidence. Neither does an assertion that past changes have fixed the problem.

The evidence from the incidents in quarantine suggests a culture that does not strive for excellence in execution of quality assurance for risk management.

The risk from a culture that does not pursue excellence in quarantine risk management is to all sectors of agriculture, whether with a domestic or international trade base. Emerging diseases can appear in any species about which assumptions must be made on epidemiology and where new "treatments" to manage risk are introduced which are not proved efficacious.

Nairn proposed that major structural change for our quarantine organisations delivers a new attitude and approach from its staff. The Association firmly believes the relevance of that recommendation in 1996 remains current and complements the risk managed approach to the continuum of quarantine he advocated. **November, 2006.**

COMMENTS CONTAINED IN THIS DOCUMENT ARE BASED ON
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Issued by Shaughn Morgan, CEO.

Prepared and published by the NSW Farmers' Association
ABN 31000004641

GPO Box 1068, Sydney NSW 2001

Ph 02 82511700 Fax 02 82511750

Email policy@nswfarmers.org.au

