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Submission on

The Senate Inquiry into Biosecurity Bill 2012 and the Inspector-General of Biosecurity Bill 2012

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About Growcom

Growcom is the peak representative body for the fruit and vegetable growing industry in Queensland, providing a range of advocacy, research and industry development services. We are the only organisation in Australia to deliver services across the entire horticulture industry to businesses and organisations of all commodities, sizes and regions, as well as to associated industries in the supply chain. We are constantly in contact with growers and other horticultural business operators. As a result, we are well aware of the outlook, expectations and practical needs of our industry.

The organisation was established in 1923 as a statutory body to represent and provide services to the fruit and vegetable growing industry. As a voluntary organisation since 2003, Growcom now has grower members throughout the state and works alongside other industry organisations, local producer associations and corporate members. To provide services and networks to growers, Growcom has about 30 staff located in Brisbane, Bundaberg, Townsville, Toowoomba and Tully. We are a member of a number of state and national industry organisations and use these networks to promote our members' interests and to work on issues of common interest.

Introduction

Growcom welcomes to the opportunity to respond to the terms of reference for the Senate Inquiry into the *Biosecurity Bill 2012 and the Inspector-General of Biosecurity Bill 2012*.

The new legislation is intended to replace the *Quarantine Act 1908* with a more streamlined and flexible environment. Growcom fully supports this intention and believes that the update is long overdue. Growcom also believes that this is a perfect opportunity to remedy many deficiencies in the current biosecurity legislation and regulations.

Many of these deficiencies have become apparent to industry during consultations related to the Import Risk Analysis process for a number of commodities. We encourage the Government to fully consider suggested mechanisms to improve this process to ensure that this review of the legislation does not become a missed opportunity.

We are disappointed with the lack of information on crucial subordinate legislation and regulations within this consultation period, particularly the regulations that will govern the import risk analysis process. This lack of information on important regulations make it extremely difficult to fully analyse the implications of many sections of the Bills.

Growcom attended a forum in Brisbane on July 18 that presented information on the new Biosecurity Bills, and particularly how the new legislation will differ from the *Quarantine Act 1908*. Discussions at this forum clarified many potential areas of concern for the horticulture industry. This submission will address a number of issues that we believe require further clarification or modification.

Chapter 1

We believe that the definition of “Appropriate Level of Protection” (ALOP) is inadequate and leaves room for re-interpretation of an acceptable level of quarantine risk.

Chapter 3

Growcom supports the reversal of the onus of proof for illegally imported goods. This simple change will result in a more efficient process and increase confidence in the biosecurity system.

This chapter also describes the Biosecurity Import Risk Analysis (BIRA) process. Based on the description of the process within the legislation, there appears to be very little functional difference from that described in the old legislation and IRA regulations. Growcom strongly supports the view expressed by DAFF at the Brisbane forum (18/7/12) that the BIRA should be a purely scientific process. Unfortunately, the new regulations are still unavailable, so it is impossible to provide a detailed critique of the new process at this time. However, Growcom believes that this is a critical element of the new biosecurity legislation and argues that a significant overhaul is required to improve industry’s confidence in the process. The section

below describes the weaknesses in the current process that must be addressed in the new regulations.

The IRA process

A clear description of Growcom's position on the IRA process is provided in our submission to Rural and Regional Affairs and Transport References Committee Inquiry into fresh pineapple imports from Malaysia and our submission to DAFF Biosecurity in response to the draft IRA for fresh pineapple imports from Malaysia.

The BIRA process is described in only two pages of the new legislation. The legislation is unacceptably vague in its descriptions of key steps in the process. For example, what information should the Agriculture Minister consider in order to determine if a BIRA is necessary? What criteria should the Director of Biosecurity consider in determining the order in which BIRAs should be conducted? What are the key requirements and timeframes for the draft, provisional and final BIRA reports?

The revised regulations for the BIRA process were not available at time of submission, and the only information available is contained within the explanatory notes. These notes contain insufficient detail to properly assess the process.

Based on our recent experience with the IRA process, we suggest that the existing process is in need of substantial improvements to increase industry's confidence in the outcomes.

1. The legislation and regulations must guarantee the independence of the BIRA process; i.e. that it is a scientific assessment of biosecurity risk and that trade implications of any decision must not be considered. While this is the goal under the current legislation and regulations, discussions with key staff of DAFF Biosecurity suggest that trade policy and its implications may influence the assessment of biosecurity risk (for e.g., it has been commented that there would be no point reaching a particular determination because the proposing country would just appeal).

2. Under the current regulations, DAFF Biosecurity must make a decision on whether to follow a standard or expanded IRA process before it has taken reasonable steps to acquire all relevant information that would enable that decision to be made with confidence. For example, in the case of the recent pineapple IRA, DAFF Biosecurity made this decision while under the incorrect impression that a key pathogen was already present in Australia, and therefore, was not a significant biosecurity risk. Once this error was pointed out to DAFF Biosecurity, it was not possible under the current regulations to alter the process to follow an expanded IRA process, involving the production of an issues paper, engaging the Eminent Scientists Group etc. At the very least, there must be an initial consultation period for all BIRAs during which DAFF Biosecurity can conduct a realistic assessment of the state of scientific evidence, with input from other stakeholders, before making a decision on whether to follow a standard or expanded IRA process. In the case of an expanded IRA, an issues paper should be prepared in all cases and not only when the Director of Biosecurity decides if it is required (again, based on what evidence?).

3. The IRA regulations should include clear guidelines for the information required before a decision can be made at important points in the process. In particular, the regulations should include clearly defined triggers for alternative IRA

pathways (standard v expanded process and stop the clock) so that these decisions are not simply at the discretion of the Director of Biosecurity.

4. The timeframes for stakeholder review/appeal should be adjusted to reflect the limited capacity of industry to conduct these reviews at short notice. Under the current regulations, DAFF Biosecurity can prepare a draft IRA in isolation, without consulting key stakeholders to check assumptions or available research. Once the draft IRA is released, industry and other stakeholders have only 60 days to review the information, identify mistakes, and provide alternative data or interpretations. DAFF Biosecurity then prepares the provisional final IRA in isolation, and it can be quite different from the draft. However, at this point there is no option for industry or stakeholders to provide further comment on the scientific or logical bases for DAFF Biosecurity's conclusions.

5. The regulations must recognise that industry members are the bearers of risk, not DAFF Biosecurity and not the proposer/applicant.

6. The burden of evidence for a low level of risk for any import application must rest with the proponent and/or DAFF Biosecurity, rather than the industry being required to demonstrate that the risk is not low. This is implied in the current regulations where it is suggested that DAFF Biosecurity should ask the proponent or another person to provide more information if it is required to complete a risk analysis. In practice, DAFF Biosecurity frequently requests additional information from industry to demonstrate that the risk is significant, rather than the proponent to demonstrate that the risk is low.

7. The regulations must provide clarification on the required standard of evidence. DAFF Biosecurity insists that it must only consider peer-reviewed published evidence to demonstrate that importation presents a significant biosecurity risk, despite the current regulations requiring only credible evidence to support a decision. DAFF Biosecurity also insists that it can only consider the results of research conducted on exactly the same pathogen and cropping system (results from research on closely-related pathogens are routinely ignored). This insistence leads DAFF Biosecurity to the inevitable conclusion that the biosecurity risk is low in all cases where the risk has not already been subject to rigorous study. I.e. if there is no peer-reviewed research on exactly the same combination of pathogen and crop in question, DAFF Biosecurity will conclude that there is no significant biosecurity risk. This is illogical and scientifically indefensible.

Given that most research projects take several years to complete, and that industry only becomes aware of a given potential biosecurity threat when an application to import is made or an IRA process is announced, there is little to no opportunity to conduct the required research before the final IRA is completed.

8. The regulations must provide explicit guidelines on the risk assessment process. We recommend that these guidelines should comply with existing and recognised international standards for risk assessment (e.g. ISO 31000). It is clear from the Hansard of the Senate Committee inquiry into the pineapple IRA that there are serious flaws in the risk assessment methodology currently employed by DAFF Biosecurity. Explicit guidelines will reduce the risk of DAFF Biosecurity reaching illogical conclusions as described in point 7.

9. It is essential that any review of a BIRA is genuinely independent from DAFF Biosecurity. An independent review of a BIRA must not be limited to the process, but also the quality and rigour of the work conducted for each step of the process.

Chapter 6

Growcom supports the general goal to provide DAFF Biosecurity with broader powers to manage on-shore incursions of pests and diseases, as this will provide more options for the management of incursions. This will provide a significant improvement over current powers described in the *Quarantine Act 1908*. We also support the stated objective that these powers will not replace existing state controls or responsibilities, but rather are targeted to supplement existing arrangements. However, we will be surprised if state governments do not express a degree of concern about how inter-jurisdictional matters will be managed in practice.

We do, however, have some concerns about some implications of these powers and believe that the legislation requires more detail to allow better analysis of these consequences. In particular, Growcom is concerned that the proposed powers may interact with the Emergency Plant Pest Response Deed (EPPRD, or "the Deed"). The EPPRD is a binding legal agreement between Plant Health Australia (PHA), the Commonwealth and state governments, and national plant industry body signatories. It details the management and funding of responses to Emergency Plant Pest (EPP) incursions, including the potential to reimburse costs of control measures to growers, and also formalises the roles played by plant industries in making management decisions and contributing to costs. Growcom believes that it is currently unclear how a Biosecurity Control Order would affect compensation arrangements defined under an existing Deed. In fact, we are surprised that the EPPRD does not seem to be mentioned in the legislation or supporting documentation.

Some points within the legislation require more precise definitions. For example, what constitutes "reasonable grounds" on which an officer may suspect a pest is present in an area, leading to the declaration of a Biosecurity Control Order? Similarly, what evidence is required for an officer to be satisfied that exercising a power is likely to be effective in, or contribute to, achieving the purpose for which the power is exercised?

Chapter 7

Growcom supports the main goal of providing a degree of shared responsibility and self-regulation through the development of approved arrangements with industry partners. Growcom also supports the goal of the new legislation to provide a simple and broad model for the arrangement to be established on a voluntary basis.

Growcom has two concerns about how these arrangements are described in the legislation. As described in our comments on chapter 6, we have concerns about how these arrangements may interact with the existing EPPRD in practice. We are also concerned about how shared responsibility may result in significant and disproportionate shifting of costs and there is no mention of any costs associated with applications and approvals. These areas must be described in more detail.

Chapter 8

Growcom supports the goal to simplify the provisions for emergency responses within the biosecurity legislation.

Chapter 12

In discussing processes for cost recovery, this chapter must include a reference to the Emergency Plant Pest Response Deed. It should also include a description of how the legislation will interact with the Deed and any implications for producers.

Inspector-General

As mentioned above under chapter 3, it is essential that any review of a BIRA is fully independent of DAFF. Under the current arrangements, appeals and reviews of an IRA are limited to errors of process. There is no provision under current legislation or regulations to address poor quality or illogical analyses performed by DAFF Biosecurity. Any review of BIRA decision must also assess the quality and rigour of DAFF Biosecurity's assessment. This is essential to improve the level of accountability and transparency of the BIRA process.