Senate Inquiry on the *Biosecurity Bill* 2012
Submission to the Senate Committee on Rural Affairs and Transport

Introduction and purpose of submission

The *Biosecurity Bill 2012* is enabling legislation for the closure of the $500 million Tasmanian salmon industry and extinction of species in Australia.

The most successful and important aspects of existing biosecurity requirements in Australia are being eliminated in this Bill, not through what the Bill says—but what it is silent on.

The Tasmanian Salmonid Growers Association (TSGA) respectfully presents this submission to the Senate Committee on Rural Affairs and Transport when considering the objections made to the *Biosecurity Bill 2012* (the Bill). The TSGA welcomes this very significant legislation to replace the 104-year old *Quarantine Act 1908*. However, there are three major omissions in the Bill that need to be addressed:

1. The current recognition of regional differences in biosecurity risk;
2. The current oversight of an independent, expert group of scientists to ensure transparency and integrity of decision making; and
3. Director of Biosecurity conflict of interest and right of appeal.

We note that these three major deficiencies are a recurring theme in all of the 78 submissions made on the Exposure Draft of the Bill. We submit that these 78 submissions remain relevant to the Senate Committee's deliberations because none of these matters have been dealt with in the current version of the Bill. We also note that of the 31 subsequent submissions to the Committee, virtually all of them have repeated these three matters of concern.

To address these matters, it is first necessary to comment on governance issues that are relevant to our concerns. Vague assurances that the Department of Agriculture, Fisheries and Forestry (DAFF, or the 'Department') will deal with these matters in subsequent regulations and guidelines are simply not accepted. The Bill must ensure that regional differentiation, transparent oversight and elimination of conflicted roles of the Director are explicitly required in law as a matter of principle.

To assist communication of our concerns, this submission is presented in the following subheadings:

- Governance issues;
- Regional differentiation;
- Independent, expert oversight and transparency;
- Appeal rights; and
- Conclusions.

The gaps in the Bill are serious because the current prohibitions on the movement of high risk goods into regions of Australia and the independent oversight of the ESG has resulted in arguably world-leading biosecurity performance and the prevention of pests and diseases in these regions in Australia to date. Why would any responsible government want to remove these important and proven elements of the existing biosecurity regime when they have served us so well?

Governance issues

Social license to develop legislation

The importance of industry having a 'social license' to operate, or equally the government having a 'social license' to govern is relevant to our concerns. To date, DAFF has not earned a social license in its dealings with the TSGA on this Bill (and other industries as discussed in separate submissions that have been submitted to the Committee). The Bill in its current form excludes the types of governance provisions and safeguards that would be unconscionable for industry to suggest in their corporate actions. As such, assurances to deal with omissions in the Bill at a later time are untrustworthy and therefore unacceptable.

The Department is insincere when speaking about partnerships with industry when the standards that the government is willing to operate under are not what the government would expect of industry. The Department behaves as if has a monopoly on intellectual capacity to prescribe legislation; when in fact, it cannot demonstrate the necessary expertise or proof of consultation that would support this behaviour.

This second submission by the TSGA was requested because DAFF did not publish its response to the 78 submissions received on the Exposure Draft of the Biosecurity Bill until after the deadline for submissions to the Senate inquiry. This was unacceptable, as stakeholders could not provide informed submissions to the Committee in the absence of this information. In its response, DAFF eventually proclaimed the benefit of releasing the Exposure Draft of the Bill and consulting stakeholders to *'identify discuss and resolve potential issues'*.[1] While this is a noble and correct statement for consultation generally, there is no evidence that the Department incorporated any substantial changes to the Bill, in spite of repeated concerns by virtually all stakeholders. Instead, DAFF provides hollow assurances that these critical concerns and omissions in the Bill will be dealt with in subsequent regulations and guidelines, reportedly to be released piecemeal as was the case with the Exposure Draft of the Bill.

Of the 78 submissions received on the Exposure Draft of the Bill, how could those experts representing hundreds of years of world-class biosecurity expertise be so wrong? Attention to the names of persons and organisations making submissions reads as a 'who's-who' list of biosecurity experts in Australia. DAFF is demonstrating contempt for advice and expertise and professionalism of organisations and recognised experts when they change a few lines on two pages of the Bill dealing with the powers of the Director of Biosecurity (Section 579) and some cost recovery provisions (the 'Miscellaneous' Chapter 13, Section 647). These are the only two substantiative changes made to a 602 page Bill, which reflects poorly on the Departments sincerity for any notion of consultation with Australia's recognised experts.

DAFF makes assurances that cannot be supported by its actions. The Department could not name for the TSGA a single aquaculture scientist/expert in their organisation, nor could DAFF name a single finfish scientist/expert—while at the same time making claims that the Department could be trusted to make correct assessments in an apparent vacuum of expertise and knowledge. While it is recognised that DAFF does have scientific capacity in its organisation, it is evident that the range of expertise is inadequate to internally conduct the scientific assessments that will be required. We were advised by DAFF that the Director of Biosecurity would have 'discretion' when seeking additional expertise for technical matters like Biosecurity Import Risk Assessments (BIRAs). This is not an acceptable outcome for this important legislation and provides no comfort to primary producers; nor is DAFF's assurance that the Inspector-General Biosecurity will ensure that BIRA processes are undertaken correctly, as the IGB is not independent and cannot possibly replace the role of the existing Eminent Scientists Group (ESG).

[1] http://www.daff.gov.au/__data/assets/pdf_file/0006/2235948/submission-issues-and-responses.pdf

Assurance can only be delivered in the Bill

The TSGA insists that normal provisions for transparency and integrity of decision making are made explicitly in the Bill, not buried in some unspecified future regulation. It must be a guiding principle for the Bill to deal with the issue of transparency, independent oversight, and the integrity of decision making as evidence of good governance. Only then will there be acceptable assurance that subsequent regulations and guidelines will be developed properly.

Regional differentiation

Australia is not a monoculture, and therefore should not be subject to a 'one size fits all' approach. We already have examples where different standards of biosecurity are required for the protection of specific regions and environments in Australia. The government's National Food plan calls for measures to *'ensure a sustainable, globally competitive and resilient food supply'*, and to *'Identify and mitigate potential risks to Australia's food security'*.[2]

The Bill's omission of recognising regional differences in biosecurity risk will create a primary producer and environmental monoculture in Australia, where regional strengths and regional difference is eliminated, high value products are no longer produced and marketed to domestic and international markets; and pristine environments are exposed to pests and diseases for which there is no recovery. However, these omissions can be easily rectified.

DAFFs response to submissions on the Exposure Draft of the Biosecurity Bill fails to acknowledge or address this major concern of many stakeholders, including both primary producers and state governments. As such, DAFF is concealing this important concern of stakeholders from the Committee.

Likely impacts to the Tasmanian salmon industry

The diseases that the Australian salmon industry could be exposed to have different consequences to those in the terrestrial environment because in the marine environment you cannot control or eradicate those diseases once they are established. Disease in the terrestrial environment can be controlled and eradicated, and physical areas can be quarantined from disease free areas to prevent spread. In the marine environment there is no opportunity to control or quarantine sections of coastal waters to prevent spread, and aquaculture farms cannot relocate to disease-free waters.

If one is seeking to understand the potential impacts of removing existing regional differences in biosecurity to the salmon industry, we only have to look as far as the government's own ABARE (2001) report.[3] The conclusions state that:

> *'Under the present quarantine restrictions the Atlantic salmon farming industry is viable…However, if an exotic disease became established and the survival rates of salmon declined from the current levels of 90 percent to around 70 percent, and if no treatment were undertaken, then salmon farms are likely to become unviable. If this occurred, farmers would be likely to leave the industry and production would cease.'*

The Tasmanian salmon industry strongly opposes the importation of salmon, exposing Australia to the threat of disease and collapse of domestic producers. There is no doubt that the allowed importation of salmon to Australia must continue to be prohibited from entry to Tasmania where the risks of introduction and establishment are far greater than the ALOP set for other areas of Australia. Tasmania's existing Import Risk Analysis and import conditions prohibit the entry of salmon due to its unacceptable risk to Tasmanian salmon stocks.

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[2] http://www.daff.gov.au/nationalfoodplan/national-food-plan

[3] ABARE 2001. *Economic impact of salmonid diseases—furunculosis and infection haematopoeitic necrosis (IHN)*. Australian Bureau of Agricultural and Resource Economics, Canberra.

Once established in the marine environment, new diseases are impossible to eradicate and extremely difficult and expensive to control (if possible at all), which is why the salmon industry is facing the threat of closure.

The removal of current regional differentiation fails to prevent accidental or mischievous introduction of disease by even a single person. This is clearly an unacceptably high risk to pristine, disease free Tasmanian waters; and clearly different from the risks of importation into urban supermarket shelves elsewhere in Australia.

If further evidence of the risks to Tasmania's salmon producers is necessary, we only have to recall the collapse of the $2.2 billion Chilean salmon industry in 2007-2008 from introduced disease. Production was halved, 25,000 jobs were lost, companies failed and the share value of remaining companies was decimated.

In contrast, the Tasmanian salmon growers have obtained environmental approval to expand production from current levels of over 47,000 tonnes in 2011/12, enabling a doubling of production by 2030. Current farm gate values exceeding $500 million are poised to escalate dramatically as an important contributor to Tasmania's regional economy, but only if the threat of disease is prevented through the current, proven protection of the environment by regional differentiation.

Other regional differentiation of biosecurity risk

Existing Commonwealth conditions imposed on major projects in Western Australia require a higher level of biosecurity requirements than other areas of Australia, precisely to reduce the risk of pests and diseases to acceptable levels in environments exposed to great economic and environmental loss.[4] Barrow Island is a first port of entry to Australia, but the Bill would remove current prohibitions from imports to Barrow Island contrary to the government's own biosecurity protections.

Similar arrangements have been demanded for the Woodside Pluto LNG Project in Western Australia, the Ichthys LNG project in Darwin, and are being contemplated for sensitive environments such as the new marine park proposed by the West Australian government for the Kimberly coast and the management of numerous islands.

Loss of regional differentiation has consequences for many other primary producers and sensitive environments in the states and territories, where significant effort has been expended to eradicate feral animals and other pests. The 'one size fits all' approach is destined to frustrate these successful eradication efforts with new introductions that cannot be prevented unless sensible regional requirements for biosecurity are implemented.

Independent, expert oversight and transparency

The indefensible omission in the Bill regarding the loss of the existing, well-regarded Eminent Scientists Group (ESG) is a serious gap in governance, and creates the situation where conflicted and less accomplished public servants are tasked with the responsibility for implementing biosecurity requirements without appropriate oversight. The Bill makes no reference or assurances with regard to transparent and independent review of BIRA matters or other decisions that should be based on good scientific evidence and debate.

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[4] See, for example, the Commonwealth conditions imposed on Chevron Australia for the development of a gas plant on Barrow Island, Western Australia. Commonwealth Approval Conditions EPBC Ref 1003/1294 (Condition 8.1) and 2008/4178 (Condition 8.1). Details of the requirements are available at: http://www.chevronaustralia.com/Libraries/Chevron_Documents/Terrestrial_and_Marine_Quarantine_Management_System.pdf.sflb.ashx.

Without the ESG, there are no safeguards for transparent and scientifically legitimate risk assessments upon which decisions are made for import permits. In the ESG's own words, their contribution is described (Radcliffe et al. 2012)[5]:

> *'The ESG has operated on the basis of having a diversity of skills in biosecurity science, and deep experience of the research process, that allowed it to weigh in the balance arguments and counterarguments about the science, in order to gauge areas where further evidence was and was not needed to support a decision.'*

The ESG also has the important role to determine whether stakeholder advice has been fully considered and taken into account in the task of import risk analysis—a role that keeps the Department 'honest' in its dealings with stakeholders.

The Inspector-General Biosecurity (IGB) is proposed to have a similar role to the expert and independent ESG. However, the IGB is neither expert in the wide range of technical disciplines that will be required as is the case with the ESG; nor is the IGB independent. Omission of the successful role of the expert and independent ESG to ensure transparency and scientific credibility since 2004 cannot be justified in the Bill.

The Tasmanian salmon industry is otherwise exposed to uninformed decision making which is likely to allow unacceptable threats of pests and diseases into marine farms. This is more generally true for all primary producers.

Director of Biosecurity conflict of interest and right of appeal

The Bill enables the Director of Biosecurity to have unchecked powers to make decisions for import permits, when there is a clear (potential) conflict of interest with the Director's powers and responsibilities for trade decisions. There is no allowance in the Bill for an independent appeal of the Director's decisions. A system that allows one body to be the judge, jury and prosecutor was emphatically rejected after Senate Inquiries into AQIS operations in the 1990's.

Without a right to appeal decisions made by the Director of Biosecurity, the Department and Director are not subject to expected governance safeguards that protect industry from uninformed decisions or abuse of powers (whether accidental or intentional).

The Bill does not explain why key recommendations of the Beale Report (Beale et al. 2008)[6] have been ignored in the Bill, particularly the Report's call for a Biosecurity Advisory Council, National Biosecurity Authority, and an expert and independent National Biosecurity Commission to avoid precisely these types of conflicts of interest. The Bill does nothing to address the Beale Report's conclusions, including the following comments on governance:

> *'The Panel has concluded that the current grouping of functions and governance arrangements are sub-optimal. They do not support a clear role for the Australian Government or the Parliament. They encourage the perception of political influence in what should be science-based analysis and decision making. They detract from the sharing of information and a common mission across the Commonwealth's biosecurity agencies. They have also produced variable relationships with the states and the private sector.'*

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[5] Radcliffe, J.C., M. Lonsdale, C. Hewitt and T. Kompas 2012. *A submission by the Eminent Scientists Group of the Department of Agriculture, Fisheries and Forestry to the Legislative Reform Team, Biosecurity Policy Division, DAFF following a briefing by Departmental Officers on 3 August 2012*. Eminent Scientists Group.

[6] Beale, R., J Fairbrother, A. Inglis and D Trebeck 2008. *One biosecurity, a working partnership—The independent review of Australia's quarantine and biosecurity arrangements; Report to the Australian government.* 'The Beale Report'. Commonwealth of Australia, Canberra.

The ESG has also noted in its submission to DAFF (Radcliffe et al. 2012):

> *'We note that under the proposed new arrangements, the Director of Biosecurity is no longer at 'arm's length' from the review processes and is responsible for causing a Biosecurity Import Risk Analysis (BIRA) to be undertaken. We suggest that this direct relationship may place the Director of Biosecurity at some disadvantage in the event of an international appeal being brought against Australia for the ultimate determination by the Director of Biosecurity, perhaps creating an impression of conflict of interest or lack of independence of process.'*

Conclusion

Although biosecurity is always a complex and challenging activity for federal, state and territory governments, we are poised to lose our reputation for being a world leader. Australia's enjoyment of being relatively free of pests and diseases, in the face of increasing global trade and visitors is under threat—putting primary producers, regional economies and the environment at risk.

The omissions of the Bill are easily rectified. As an attachment to this submission, we have identified the simple changes necessary to correct these omissions. While we accept that these simple changes will not be incorporated verbatim, they clearly articulate our proposed solution in the spirit of being helpful to the Committee.

Finally, all appearances are that the Bill has been 'rushed through' its development.

- Consultation with stakeholders has been ignored.
- Exceedingly short time frames have been set by the Department.
- Inconsistencies exist with other legislation that is being simultaneously proposed.
- We understand that the Committee is scheduled to deliberate on this Bill for only one day.

We have waited 104 years to replace the *Quarantine Act 1908*. Surely we could take just a few more weeks to ensure that critical omissions are properly addressed in the Bill (not in unspecified future regulations and guidelines) in an atmosphere of good governance.

The TSGA and its members are available to provide professional, informed advice and testimony to the Committee; and we respectfully request the opportunity to do so.

Attachment
Submission to the Senate Inquiry on the *Biosecurity Bill 2012*
Tasmanian Salmonid Growers Association

Recommended changes to the *Biosecurity Bill 2012* to take stakeholder concerns into account

Provision to take regional differences into account when undertaking BIRAs

Section 168 Guide to this Part

Delete the following text that was added since the public consultation on the Exposure Draft of the Bill:

> ~~*This Part applies to the exclusion of State and Territory laws to the extent that the laws purport to prohibit or restrict the bringing or importation of particular goods into Australian territory, or into a part of Australian territory, from outside Australian territory for the purpose of managing biosecurity risks associated with the goods.*~~

New Section 169 The principles
[retain and change the numbering of subsequent sections]

> *(1) Requirements for undertaking a BIRA shall recognise regional differences in the risk and consequences of exposure to imported goods that may be approved by the Director of Biosecurity.*
>
> *(2) The BIRA shall determine both the ALOP for Australia and the level of risk for specific regions of Australian territory where economic, social or environmental consequences of introduced pests and diseases may constitute unacceptable risks that must be eliminated through conditions on an Import Permit approved by the Director of Biosecurity.*
>
> *(3) All draft BIRAs shall be referred to an expert independent panel to review and make recommendations on the balance of scientific evidence and to ensure that stakeholder input is appropriately addressed.*

Section 169 Exclusion of State and Territory laws

Delete this section [retain and change the numbering of the subsequent subsections]:

> ~~*This Part applies to the exclusion of a law, or a provision of a law, of a State or Territory to the extent that the law or provision purports to prohibit or restrict the bringing or importation of particular goods into Australian territory, or into a part of Australian territory, from outside Australian territory for the purpose of managing biosecurity risks associated with the goods.*~~

Section 171 Conditionally non-prohibited goods

Insert after subsection (4)(b):

> *(4)(c) a condition that goods included in that class must not be brought or imported into specified regions of Australian territory as assessed under subsection 175.*

Section 175 Director of Biosecurity may grant permit

Insert after subsection (3) [retain and change the numbering of the subsequent subsections]:

> *(4) The Director of Biosecurity must notify State and Territory Ministers for agriculture and fisheries when commencing a BIRA under section 164. The Director of Biosecurity must identify regional differences in biosecurity risk when conducting a BIRA for the purpose of deciding whether to impose conditions to reduce biosecurity risk to acceptable levels for specific regions of Australian territory under a permit that may be granted.*

Provision for an Eminent Scientists Group to review draft BIRAs

Section 9 Definitions

Insert (alphabetical order):

Eminent Scientists Group (ESG) *has the meaning given by section 168.*

Note that section 168 refers to a new section of the Bill as described below.

Section 166 Process for conducting a BIRA

Insert after subsection (5):

(6) The Director of Biosecurity shall refer a draft BIRA to the Eminent Scientists Group (ESG) for independent, expert review as per the requirements of section 168.

Section 167 Reports

Amend subsection (1) to add the words 'publicly available':

(1) The regulations must require the Director of Biosecurity to prepare the following publicly available reports as part of the process of conducting a BIRA

Insert after subsection (1)(a) [retain and change the numbering of the subsequent subsections]:

(1)(b) a report of the ESG review of the draft BIRA

New Section 168 Eminent Scientists Group
[retain and change the numbering of subsequent sections]

(1) The regulations must require the Minister to appoint a minimum of five eminent independent scientists with expertise in biosecurity to the ESG, to serve a term of at least three years. The term of appointment may be extended at the discretion of the Minister. The Minister shall appoint one of the members as Chair. The Minister shall approve the terms of reference of the ESG.

(2) The ESG shall review draft BIRAs referred by the Director of Biosecurity,

(3) The ESG shall have responsibilities to:

(a) consider whether the draft BIRA has been prepared to address all stakeholder submissions;

(b) consider whether scientific evidence has been appropriately sourced and interpreted in the draft BIRA;

(c) provide recommendations for corrective action and/or opportunities to improve the draft BIRA.

(4) The ESG shall consult with persons responsible for preparation of the draft BIRA and stakeholders, as necessary.

(5) The ESG shall report its findings and recommendations on the review of the draft BIRA to the Director of Biosecurity within 60 days.

(6) The Director of Biosecurity shall require persons preparing the provisional BIRA report and the final BIRA report to address the findings and recommendations of the ESG.

Provision for eliminating the Director of Biosecurity's conflict of interest

Note the suggested changes above. The *Inspector-General of Biosecurity Bill 2012* will need to be revised accordingly (not the subject of this submission).