



**Australian Government**

**Department of Foreign Affairs and Trade**

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**Submission by the Department of Foreign Affairs and Trade to the Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Biosecurity Bill 2012 and the Inspector-General of Biosecurity Bill 2012**

The Department of Foreign Affairs and Trade (DFAT) welcomes the opportunity to provide a submission to the Senate Standing Committee on Rural and Regional Affairs and Transport Inquiry into the Biosecurity Bill 2012 and the Inspector-General of Biosecurity Bill 2012. DFAT continues to take a close interest in the development of these bills and in the reform of Australia's biosecurity system more broadly following the 2008 independent review of Australia's quarantine and biosecurity arrangements (the Beale Review).

Australia's economy and environment benefit significantly from a strong biosecurity system. Australia relies heavily on the competitive advantage afforded to its agricultural, fisheries and forestry industries by our favourable animal and plant health status.

DFAT's principal concern in the development of the new biosecurity bills has been to ensure that the legislation will continue to protect Australia's favourable biosecurity status in a manner consistent with Australia's international trade rights and obligations, principally those arising under the World Trade Organization (WTO) agreements. Of particular relevance is the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement), which requires *inter alia* that SPS measures be applied only to the extent necessary to protect human, animal or plant life or health, be based on scientific principles and not maintained without sufficient scientific evidence. Australia also has related rights and obligations arising from the free trade agreements to which it is a party.

DFAT is pleased to note that the Biosecurity Bill 2012 enshrines a risk-based approach to biosecurity interventions – in which resources are focussed on the risks of greatest biosecurity concern. In directing a move away from mandatory intervention, the bill will better reflect the obligations in the SPS Agreement, which require WTO Members to ensure that their SPS measures are based on an assessment of the risks to human, animal or plant life or health, and are not maintained without sufficient scientific evidence. The practical effect of a risk-based approach is that there will be faster clearance of low-risk goods at the border, reducing both delays and costs for industry. Improvements in this area will be welcomed by trading partners and domestic industry alike.

DFAT also notes that the Biosecurity Bill 2012 seeks to override any state or territory law that purports to prohibit or restrict the bringing in or importing of goods on biosecurity grounds where to do so would be contrary to Commonwealth law. DFAT supports this approach as a means of ensuring that Australia is better positioned to meet its obligation under the SPS Agreement to avoid arbitrary or unjustifiable distinctions in the levels of protection it applies in different situations. It is important to note that the Commonwealth can be held responsible in the WTO (even to the point of dispute action) for state and territory laws that are inconsistent with Australia's WTO obligations. It is therefore essential that Commonwealth law is able to prevail in these situations.

DFAT further notes that the Biosecurity Bill 2012 will provide a statutory process to ensure transparency and accountability by clearly outlining roles and responsibilities and ensuring independence of scientific and operational decision making. DFAT supports the Bill expressly stating that the Minister responsible for agriculture must not give directions to the Director of Biosecurity in relation to the conduct of a biosecurity import risk analysis or a decision to issue an import permit. This will help underscore to our trading partners the apolitical basis of Australia's SPS measures and contribute to international confidence in the independence and scientific rigour of Australia's biosecurity regime. For the same reasons, DFAT also supports the proposal for exceptions from disallowance and sunseting for biosecurity determinations.

DFAT notes that the Inspector-General of Biosecurity Bill aims to ensure the integrity of Australia's biosecurity systems through independent review of the performance of functions and exercise of powers by the Director General of Biosecurity. DFAT supports the establishment of mechanisms to ensure effective administration through regular review and reporting.

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