

Senate Rural and Regional Affairs and Transport Legislation Committee

**Written Questions on Notice – Friday, 08 February
2013
Canberra, ACT**

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

Question Number	Page No's.	Witness	Question asked by	Answered
1	-	DAFF	Senator Thorp	01/03/13
2	-	DAFF	Senator Thorp	01/03/13
3	-	DAFF	Senator Thorp	01/03/13
4	-	DAFF	Senator Thorp	01/03/13
5	-	DAFF	Senator Thorp	01/03/13
1	-	ISC	Senator Thorp	
2	-	ISC	Senator Thorp	
3	-	ISC	Senator Thorp	
1	-	TSGA	Senator Thorp	21/02/13
2	-	TSGA	Senator Thorp	21/02/13
3	-	TSGA	Senator Thorp	21/02/13

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

**Inquiry into the Biosecurity Bill 2012 and the Inspector-General of
Biosecurity Bill 2012**

Public Hearing Friday, 08 February 2013

**Written Questions Taken on Notice – Department of Agriculture, Fisheries
and Forestry**

Question 1

Senator Thorp:

Many submissions are concerned with the omission of the successful Eminent Scientists Group (ESG) from the legislation. Can you explain whether this expert and independent group will continue to have any role, and if not, how this decision was reached?

Question 2

Senator Thorp:

Is there any mechanism to allow an independent appeal of the Director of Biosecurity's decisions? If not, why was this decision made?

Question 3

Senator Thorp:

In their submission, the Tasmanian Salmonid Growers Association (TGSA) voiced concerns that there are currently no experts in either aquaculture of finfish within the department. In the context of this, and the proposed removal of the ESG, how will you ensure that there is enough specialist expertise in the department to ensure appropriate decisions are made?

Question 4

Senator Thorp:

How is the Bill intended to give effect to the notion of biosecurity partnership with community? Apart from being able to make submissions on BIRAs, what opportunity for influence (including the provision of expert information) do biosecurity-concerned individuals and groups have for influencing policies and decisions?

Question 5

Senator Thorp:

Does the Bill have any processes that will ensure equal weighting for economic, health and environmental risks.

Rural and Regional Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

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

Department of Agriculture, Fisheries and Forestry

Question: 1 (Written)

Division/Agency: Biosecurity Policy, Department of Agriculture, Fisheries and Forestry

Topic: Eminent Scientists Group

Senator Thorpe asked:

Many submissions are concerned with the omission of the successful Eminent Scientists Group (ESG) from the legislation. Can you explain whether this expert and independent group will continue to have any role, and if not, how this decision was reached?

Answer:

The Eminent Scientists Group (ESG) is currently included in the *Quarantine Regulations 2000*. Its purpose is to provide external, independent, scientific and economic scrutiny of significant import risk analyses through the review of draft reports.

The Biosecurity Bill itself does not refer to the ESG (or independent expert review). The Biosecurity Bill 2012 Explanatory Memorandum outlines that the Biosecurity Import Risk Analyses (BIRA) process will be subject to independent scientific review, similar to the Eminent Scientists Group process outlined in the Quarantine Regulations, to ensure that the outcomes in the final BIRA have a solid scientific basis. Options for the independent review of BIRAs—such as independent review by a panel—will be further explored and stakeholder views will be sought.

Rural and Regional Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

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

Department of Agriculture, Fisheries and Forestry

Question: 2 (Written)

Division/Agency: Biosecurity Policy, Department of Agriculture, Fisheries and Forestry

Topic: Appeal of Director of Biosecurity's decisions

Senator Thorpe asked:

Is there any mechanism to allow an independent appeal of the Director of Biosecurity's decisions? If not, why was this decision made?

Answer:

A person who is affected by a decision may seek a review under the *Administrative Decisions (Judicial Review) Act 1977*.

In addition, the Bill provides that a number of decisions made under the Bill, including those made by the Director of Biosecurity, are reviewable decisions. These decisions may be reviewed internally or by the Administrative Appeals Tribunal (see Part 1 of Chapter 13). If a decision is not listed in the Act or the regulations as a reviewable decision, internal review under the Bill and merits review is not available.

Rural and Regional Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

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

Department of Agriculture, Fisheries and Forestry

Question: 3 (Written)

Division/Agency: Biosecurity Policy, Department of Agriculture, Fisheries and Forestry

Topic: Expertise within DAFF

Senator Thorpe asked:

In their submission, the Tasmanian Salmonid Growers Association (TGSA) voiced concerns that there are currently no experts in either aquaculture of finfish within the department. In the context of this, and the proposed removal of the ESG, how will you ensure that there is enough specialist expertise in the department to ensure appropriate decisions are made?

Answer:

The department employs staff with qualifications relating to aquaculture, including:

- employees with doctorates in aquaculture and aspects of aquatic animal health, including the role of salmonid gill bacteria in amoebic gill disease, feeding technology in salmonid aquaculture and applied research experience with aquaculture industries in Australia and Asia
- employees with Masters qualifications in aquaculture and fish zoology
- employees with degrees in fisheries and aquaculture management.

Staff members with these specific aquaculture related qualifications are employed in the Biosecurity Animal Division of the department, as well as the Fisheries Branch and the Australian Bureau of Agricultural and Resource Economics and Sciences. Staff within the Australian Fisheries Management Authority may also hold relevant qualifications. The department is able to draw on the expertise of staff in these areas for biosecurity purposes as required. The department also draws on expertise from, and works collaboratively with, state and territory governments through the Marine Pest Sectoral Committee, and more generally from experts outside the department as required.

Rural and Regional Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

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

Department of Agriculture, Fisheries and Forestry

Question: 4 (Written)

Division/Agency: Biosecurity Policy, Department of Agriculture, Fisheries and Forestry

Topic: Partnership with community

Senator Thorpe asked:

How is the Bill intended to give effect to the notion of biosecurity partnership with community? Apart from being able to make submissions on BIRAs, what opportunity for influence (including the provision of expert information) do biosecurity-concerned individuals and groups have for influencing policies and decisions?

Answer:

The Bill provides a number of opportunities for members of the community, business and industry to partner with the Australian Government to manage biosecurity risks. For example, under the approved arrangement and first point of entry regimes in the Bill, industry participants will be able to manage the biosecurity risk associated with their operations, where it is appropriate to do so, in a way that is less prescriptive and outcomes focussed.

The department is also committed to partnering with the community and mobilising biosecurity advocates to help manage risks across the continuum. This is expected to be further explored through administrative programs and policies rather than legal responsibilities and obligations expressed in legislation.

The department will also be considering stakeholder views more broadly in the implementation of the Bill and in consultation on the regulations.

The department has a number of channels through which individuals and groups can offer expert advice, question policy and provide input into processes and procedures. These channels include, but are not limited to, emails, working groups or face-to-face meetings. Individuals and groups can be involved in developing and influencing biosecurity policy through forums such as the National Biosecurity Committee Stakeholder Engagement Consultative Group and industry consultative committees.

Rural and Regional Affairs and Transport Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

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

Department of Agriculture, Fisheries and Forestry

Question: 5 (Written)

Division/Agency: Biosecurity Policy, Department of Agriculture, Fisheries and Forestry

Topic: Environmental biosecurity

Senator Thorpe asked:

Does the Bill have any processes that will ensure equal weighting for economic, health and environmental risks?

Answer:

Yes. The definition of 'biosecurity risk' means:

- the likelihood of a disease or pest:
 - entering Australian territory or a part of Australian territory or
 - establishing itself or spreading in Australian territory or a part of Australian territory; and
- the potential for any of the following:
 - the disease or pest to cause harm to human, animal or plant health
 - the disease or pest to cause harm to the environment
 - economic consequences associated with the entry, establishment or spread of the disease or pest.

**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

**Inquiry into the Biosecurity Bill 2012 and the Inspector-General of
Biosecurity Bill 2012**

Public Hearing Friday, 08 February 2013

**Written Questions Taken on Notice – Tasmanian Salmonid Growers
Association**

Question 1

Senator Thorp:

What do you believe are the potential risks to your industry if regional differentiation is not included in the Bill?

Question 2

Senator Thorp:

What benefits does the ESG currently bring to biosecurity and what do you see as potential risks of removing them from the process?

Question 3

Senator Thorp:

Could you explain your concerns with the proposed scope of the Director of Biosecurity's responsibilities?

Response to Questions on Notice from Senator Lin Thorp

The Tasmanian Salmonid Growers Association (TSGA) is pleased to respond to questions taken on notice by Senator Lin Thorp. We welcome the opportunity to assist the Senate Committee for Rural and Regional Affairs and Transport in its Inquiry on the *Biosecurity Bill 2012*.

We refer to, and incorporate by reference, the TSGA's submissions to the Committee dated 19 December 2012 and 31 January 2013.

Question 1

Senator Thorp:

What do you believe are the potential risks to your industry if regional differentiation is not included in the Bill?

Response from the TSGA:

The *Biosecurity Bill 2012* (the Bill) is enabling legislation for the rapid and irreversible downfall of the \$500 million Tasmanian salmon industry, and elimination of its potential to double with approved expansion plans.

Twelve hundred direct jobs are at risk in the salmon industry alone, with very significant flow-on impacts to the Tasmanian economy. The bigger picture is that Tasmanian primary industry directly accounts for one in every five jobs, with indirect employment of thousands of people in numerous businesses. Our regional economy absolutely relies on its reputation for excellence in primary production and has worked tirelessly to earn a world-class reputation and privileged access to markets with high-quality, disease free produce. This capacity is a national asset that has been sensibly protected in the existing biosecurity regime which recognises state and regional differences in biosecurity risk. To date, regional differentiation is a key success of Australia's biosecurity that is omitted in the Bill.

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*'.¹

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, as suggested in our submission to the Committee (proposed amendments in Attachment 1 of the TSGA's supplementary submission, dated 28 February 2013).

The Department of Agriculture, Fisheries and Forestry (DAFF) response to 78 submissions on the Exposure Draft of the Biosecurity Bill fails to acknowledge or address this major concern of many stakeholders in the Bill, including both primary producers and state governments. As such, DAFF is concealing this important concern of stakeholders from the Committee.

We have subsequently noted that eight of the 34 submissions to the Senate Inquiry directly argue the case for regional differentiation, with other submissions referring to the similar objective to protect environmental heritage and existing area freedoms from pests and diseases.

¹ <http://www.daff.gov.au/nationalfoodplan/national-food-plan>

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.² 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. Similar threats expose other primary producers to serious consequences in regions where Australia's food is grown.

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 becoming unviable. Indeed, the government's ABARE (2001) report supports this sobering claim.

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 successfully developed into the highest value fishery in Australia and 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.

The TSGA respectfully asserts that existing provisions for regional differentiation to protect vulnerable industries and environments must be stated explicitly in the Bill; not promised in some unspecified future regulation as being suggested by DAFF. Only then will there be acceptable assurance that subsequent regulations and guidelines will be developed with the correct intentions and requirements.

² ABARE 2001. *Economic impact of salmonid diseases—furunculosis and infection haematopoietic necrosis (IHN)*. Australian Bureau of Agricultural and Resource Economics, Canberra.

Question 2

Senator Thorp:

What benefits does the ESG currently bring to biosecurity and what do you see as potential risks of removing them from the process?

Response from the TSGA:

The Eminent Scientists Group (ESG) currently brings an important governance safeguard to the process of undertaking Import Risk Analysis (IRA) for the purpose of considering whether to grant an import permit, and under what conditions the import permit might be granted. It is referred to as Biosecurity Import Risk Analysis (BIRA) in the Bill.

The ESG currently scrutinises draft IRAs prepared by DAFF and its hand-picked consultants under existing requirements. The independent expert body of renowned scientists determines whether the reliance on scientific evidence and opinion is balanced, and whether there are gaps in scientific evidence and arguments that must be addressed. 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.

It is this role of the ESG to ensure that proper transparency and expert scientific oversight that is of paramount importance to primary producers—particularly those in regional areas which are vulnerable to economic, environmental, health and social consequences from exposure to introduced pests and diseases.

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

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 BIRA 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 wholly inadequate to internally conduct the scientific assessments that will be required.

Without the ESG, there are no safeguards for transparent and scientifically legitimate risk assessments upon which decisions are made for import permits and conditions. In the ESG’s own words, their contribution is described by the current Chair (Radcliffe et al. 2012)³:

‘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 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 risk to primary producers is that import decisions will be politicised rather than based on properly scrutinised scientific evidence which takes (among other things) regional differentiation into account.

³ 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.

The Tasmanian salmon industry is otherwise exposed to uninformed decision making which is likely to present unacceptable threats of pests and diseases to marine farms with catastrophic consequences. This same risk more generally applies to all primary producers which is evident in 11 of the 34 submissions received by the Committee.

Question 3

Senator Thorp:

Could you explain your concerns with the proposed scope of the Director of Biosecurity's responsibilities?

Response from the TSGA:

The TSGA was 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 (IGB) will ensure that BIRA processes are undertaken correctly, as the IGB is not independent and cannot possibly replace the role of the existing ESG.

The Bill enables the Director of Biosecurity to have unchecked powers to make decisions for import permits, when there is a clear 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, only appeals on procedural rather than substantive matters. A system that allows one government 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, politicised 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)⁴ 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 (Beale et al. 2008):

'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.'

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.'

⁴ 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.

These concerns are not limited to the TSGA. Of the 34 submissions received by the Committee, 14 of these submissions express serious concerns regarding the Director of Biosecurity's conflict of interest in the Bill, and 10 of the submissions express concerns with the lack of an independent right of appeal.

For the Senator and the Committee's information, the following table identifies the matters raised in these Questions on Notice in the 34 stakeholder submissions:

No.	Organisation	Regional Differentiation	Eminent Scientists Group	Powers of Director of Biosecurity	Independent appeal
1	Cherry Growers Australia	✓			
2	Aus Veg			✓	✓
3	Animal Health Alliance				
4	Australian Plant Pathology Society		✓		
5	Department of Health and Ageing				
6	Department of Primary Industries, Parks, Water & Environment (Tas)		✓	✓	
7	Dr Tim Mather (Vet)				
8	Nursery and Garden Industry Australia		✓	✓	✓
9	Dr Sophie Riley (Law Lecturer UTS)				
10	Horticulture Australia				
11	Australian Forest Products Association				
12	Leila Huebner			✓	
13	New South Wales apiarist Association				
14	The Australian Veterinary Association	✓		✓	
15	Australian Chicken Growers Council Ltd	✓			✓
16	Australian Chicken Meat Federation	✓			✓
17	Shipping Australia Ltd			✓	
18	Community and Public Sector Union			✓	
19	Ports Australia				
20	Conference of Asia Pacific Express Carriers				
21	Australian Banana Growers Council		✓	✓	
22	Industry Working Group on Quarantine		✓		
23	Growcom				✓
24	Food and Beverage Importers Association				
25	Tasmanian Salmonid Growers Association	✓	✓	✓	✓
26	Department of Agriculture, Fisheries and Forestry (Commonwealth)				
27	National Farmers Federation		✓		
28	Department of Agriculture, Fisheries and Forestry (QLD)	✓			
29	Apple and Pear Australia Ltd		✓	✓	✓
30	Department of Foreign Affairs and Trade				
31	NSW Farmers Association		✓	✓	
32	Invasive Species Council			✓	✓
33	Fruit Growers Tasmania	✓	✓	✓	✓
34	Primary Industry Biosecurity Action Alliance	✓	✓	✓	✓