



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

***Submission to Rural and Regional Affairs and Transport  
Legislation Committee***

**December 2012**

**NSW Farmers' Association  
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Sydney NSW 2000**

**NSW Farmers' Association Background**

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, Livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.



## **Executive Summary**

NSW Farmers welcomes this opportunity to provide feedback to the Senate Rural and Regional Affairs and Transport Legislation Committee from our members on the proposed new biosecurity legislation. This legislation will be the most significant change to our nation's biosecurity laws in over 100 years and it is important that the final legislation ensures that Australia's biosecurity system is able to protect industries and the public and respond to new and existing threats.

We understand that this legislation seeks to address the deficiencies in the current legislation which largely are a result of the changes that have occurred in the past 100 years. This includes increasing Federal powers to deal with biosecurity threats within our borders and updating overlapping or inefficient regulations. While we are largely supportive of the reform contained within legislation, NSW Farmers has some concerns with certain aspects of the proposed legislation.

NSW Farmers asks that the committee consider the following:

1. The establishment of an independent biosecurity statutory authority (the National Biosecurity Commission) with the specialist skills required to determine and administer appropriate quarantine standards and procedures, in line with the Beale Review recommendation. This would replace the current provision in the legislation for the Director of Biosecurity to be part of the Agricultural Department.
2. The removal of clauses 165 (Agriculture Minister may direct Director of Biosecurity to commence a BIRA) and 581 (Agriculture Minister may give general directions to Director of Biosecurity) and their replacement with clauses expressly providing that the National Biosecurity Commission and its officers are not subject to direction by the Government in performing their duties in relation to Biosecurity Import Policy determinations and in relation to import permit decisions. This is in line with the Beale review recommendation.
3. An independent scientific review of the BIRA process, similar to the Eminent Scientists Group process outlined in the Quarantine Regulations, which is included in legislation not regulations.
4. A requirement for affected parties to any BIRA process to be directly notified by the Director of Biosecurity and for an issues paper to be released for consultation upon request.
5. Slowing down the passage of this legislation to ensure that the regulations which will govern the implementation of this legislation are published *before* the legislation is passed into law. This is especially important for the regulations governing the establishment of Approved Arrangements and the decision making process for Australia's Appropriate Level of Protection (ALOP). The development of these regulations should be subject to extensive industry and community consultation.
6. The 59 submissions made to Department of Agriculture, Fisheries and Forestry on this legislation. Many of these were critical and NSW Farmers is concerned that no significant changes have been made to the legislation between the release of



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the exposure draft and the introduction of the Biosecurity Bill 2012 and the Inspector General of Biosecurity Bill to Parliament on 28 November 2012.

7. Exploring the option of including security in separate taxation legislation to ensure that the burden of any biosecurity breach is spread across industry participants and not concentrated upon those who are unfortunate enough to be affected
8. The 84 recommendations made by the widely supported Beale Review in 2008, noting that only 19 of these recommendations have been adopted in some format and many of the important and significant issues raised in the Review have not been addressed.



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## **Introduction**

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, Livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

NSW Farmers welcomes this opportunity to provide feedback from our members on the proposed new biosecurity legislation. This legislation will be the most significant change to our nation's biosecurity laws in over 100 years and is an excellent opportunity to update the existing arrangements.

NSW Farmers have a number of concerns with the draft biosecurity legislation which are outlined below.

### **1. Beale Review recommendations**

This legislation has been developed in response to the Beale Review (*One biosecurity: a working partnership*), a 2008 independent review of Australia's current biosecurity arrangements which identified 84 recommendations. The Beale Review received wide-ranging and enthusiastic support when it was released, so it is disappointing that only 19 of these recommendations have been adopted in some format and many of the important and significant issues raised in the Review have not been addressed.

#### **1.1 National Biosecurity Commission**

NSW Farmers believes that the recommendation of the Beale Review, to establish a separate biosecurity statutory authority with the specialist skills required to determine and administer appropriate quarantine standards and procedures, should be reconsidered. This would replace the current provision in the legislation for the Director of Biosecurity to be part of the Agricultural Department.

This is especially important given the recent politicisation of biosecurity in the media with regards to the importation of pineapples and continuing concerns about risks to the potato industry that are associated with importing fresh New Zealand potatoes that may be carrying the Tomato-potato Psyllid. Biosecurity standards and decisions should not be subject to political intervention and NSW Farmers is concerned that this may be the case if there is no independent statutory authority.

#### **1.2 Independence of the National Biosecurity Commission**

NSW Farmers believes that the Beale recommendation that the legislation should prevent the Government directing the Director of Biosecurity in relation to an import permit decision should be reconsidered to ensure the independence of Australia's biosecurity system.

To achieve this NSW Farmers asks the committee to consider the removal of clauses 165 (Agriculture Minister may direct Director of Biosecurity to commence a BIRA) and 581 (Agriculture Minister may give general directions to Director of Biosecurity). These clauses allow unacceptable political interference in biosecurity processes and procedures. In line with Beale review recommendations, we ask that these clauses are



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replaced with clauses expressly providing that the National Biosecurity Commission and its officers are not subject to direction by the Government in performing their duties in relation to Biosecurity Import Policy determinations and in relation to import permit decisions.

### **1.3 Solutions**

To address these concerns NSW Farmers requests the committee consider:

1. The 84 recommendations made by the widely supported Beale Review in 2008, noting that only 19 of these recommendations have been adopted in some format and many of the important and significant issues raised in the Review have not been addressed.
2. The establishment of an independent biosecurity statutory authority (the National Biosecurity Commission) with the specialist skills required to determine and administer appropriate quarantine standards and procedures, in line with the Beale Review recommendation. This would replace the current provision in the legislation for the Director of Biosecurity to be part of the Agricultural Department.
3. The removal of clauses 165 (Agriculture Minister may direct Director of Biosecurity to commence a BIRA) and 581 (Agriculture Minister may give general directions to Director of Biosecurity) and their replacement with clauses expressly providing that the National Biosecurity Commission and its officers are not subject to direction by the Government in performing their duties in relation to Biosecurity Import Policy determinations and in relation to import permit decisions. This is in line with the Beale review recommendation.

## **2. Biosecurity Import Risk Analysis**

### **2.1 Consultation**

Enshrining the Biosecurity Import Risk Analysis (BIRA) process, which will replace the current Import Risk Assessment (IRA) process, in legislation is a positive step. However, it is concerning that there is no requirement to consult industry about the matters taken into account when conducting a BIRA or even to publish these guidelines.

The BIRA process, as outlined in the accompanying Explanatory Notes to the legislation published on the DAFF website, only allows for public and industry consultation at the discretion of the Director of Biosecurity. This is not acceptable and NSW Farmers will be satisfied when there is a requirement for affected parties to any BIRA process to be directly notified by the Director of Biosecurity and for an issues paper to be released for consultation upon request.

### **2.2 Eminent Scientists Group**

The current scientific review of IRAs is conducted by an Eminent Scientists Group (ESG) appointed by the Minister for Agriculture, Forestry and Fisheries. NSW Farmers are not comfortable that in the new legislation the ESG will no longer be a mandatory part of the



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review process and will instead be replaced by a single reviewer called the Inspector General of Biosecurity. It is hard to imagine this person having the experience and depth of knowledge to properly assess any issues that a diverse group of qualified scientists has. Biosecurity arrangements must protect against threats from pests or diseases to human, plant and animal health, the environment and the economy. This is a huge amount of responsibility for one person.

It is not satisfactory to include this scientific review process in the regulations as the explanatory memorandum has suggested. Scientific integrity should be at the very heart of an effective biosecurity system and to ensure this NSW Farmers believes that the scientific review should be included as mandatory in the legislation not the regulations.

### **2.3 Solutions**

To address these concerns NSW Farmers requests the committee consider:

1. A requirement for affected parties to any BIRA process to be directly notified by the Director of Biosecurity and for an issues paper to be released for consultation upon request.
2. An independent scientific review of the BIRA process, similar to the Eminent Scientists Group process outlined in the Quarantine Regulations, which is included in legislation not regulations.

## **3. Passage of the legislation**

### **3.1 Passage of the legislation**

NSW Farmers is concerned that the pace at which this legislation is being moved through the parliament will not allow stakeholders the time to provide important feedback on all relevant aspects of the legislation. This is because the regulations which will govern the implementation of this legislation will be published *after* the legislation is passed into law. Many of the most significant elements of the new biosecurity arrangements will be governed by the regulations which will accompany this legislation and it is unacceptable to ask members of parliament to agree to the most significant overhaul of our quarantine regulations in over 100 years without all the details in front of them. The development of these regulations should be subject to extensive industry and community consultation. This is especially important for the regulations governing the establishment of Approved Arrangements and the decision making process for Australia's Appropriate Level of Protection (ALOP).

The draft legislation defines the acceptable level of risk which governs the establishment of approved arrangements and the conduct of a BIRA by referencing the Appropriate Level of Protection for Australia. The legislation states:

*The Appropriate Level of Protection (or ALOP) for Australia is a high level of sanitary and phytosanitary protection aimed at reducing biosecurity risks to a very low level, but not to zero.*



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NSW Farmers is concerned with how this will be interpreted as the interpretation of “a very low level but not to zero” will depend on regulations which have yet to be published. The ALOP will inform most decisions about biosecurity operations and as such it is imperative that there is clarity around its meaning. For example, it is unclear whether a risk which carries a high economic burden will be treated differently to one which may have a relatively small economic impact. At what point is the threshold “very low” determined?

Questions regarding Approved Arrangements which are still outstanding and may be part of the regulations include:

- How will the Minister make decisions about approved arrangements?
- How will security bonds be determined and why are they not compulsory?
- How will the level of risk be assessed?
- What are the different categories of risk?
- What are the processes for auditing and ensuring compliance?
- Under what circumstances and how often will approved arrangements be reviewed?
- What conditions will be imposed on participants in an approved arrangement?

In order to ensure that this legislation is reviewed in its full context, NSW Farmers asks the committee to recommend that the legislation not be passed as law until the community, industry and parliamentarians have had the time to review the regulations which will govern the implementation of this legislation.

### **3.2 Solutions**

To address these concerns NSW Farmers requests the committee consider:

1. Slowing down the passage of this legislation to ensure that the regulations which will govern the implementation of this legislation are published *before* the legislation is passed into law. This is especially important for the regulations governing the establishment of Approved Arrangements and the decision making process for Australia’s Appropriate Level of Protection (ALOP). The development of these regulations should be subject to extensive industry and community consultation.
2. The 59 submissions made to the Department of Agriculture, Fisheries and Forestry on this legislation. Many of these were critical and NSW Farmers is concerned that no significant changes have been made to the legislation between the release of the exposure draft and the introduction of the Biosecurity Bill 2012 and the Inspector General of Biosecurity Bill to Parliament on 28 November 2012.

## **4. Security**

### **4.1 Security**

NSW Farmers notes that the only security that is to be attached to Approved Arrangements is not compulsory and will only cover any costs incurred as a result of the



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activities of that particular arrangement. We consider that security is an imperative risk management tool as the outcome of any biosecurity breach can involve significant costs to government and industry and as such should be made compulsory for all approved arrangements. The level of security required would be commensurate with the level of risk associated with that approved arrangement.

It could also be that this is an inadequate level of security for approved arrangements and we would encourage the committee to pursue security arrangements which allow the build up of funds which would be used to cover the cost of any serious biosecurity breach. This would recognise that although the biosecurity risk associated with approved arrangements will be low, the potential cost of any breach will could be disproportionately high. As we have seen with Foot and Mouth Disease in the United Kingdom this can lead to the shutting down of a whole industry and billions of dollars worth of damage.

DAFF has informed NSW Farmers that any security arrangements of this kind would have to be included in separate taxation legislation. We encourage the committee to explore this option to ensure that the burden of any biosecurity breach is spread across industry participants and not concentrated upon those who are unfortunate enough to be affected.

## **4.2 Solutions**

To address these concerns NSW Farmers requests the committee consider:

1. Exploring the option of including security in separate taxation legislation to ensure that the burden of any biosecurity breach is spread across industry participants and not concentrated upon those who are unfortunate enough to be affected

## **Conclusion**

NSW Farmers is pleased that this comprehensive re-evaluation of the legislation governing biosecurity in Australia has been undertaken. We appreciate the opportunity to provide feedback as this legislation is important to many of our members. Hopefully the submission that we have provided is useful and will help to refine the legislation before it is passed into law.