Primary Industry Biosecurity Action Alliance (PIBAA)

Senate Standing Committee on Rural and Regional Affairs and Transport:
Biosecurity Bill 2012 and the Inspector-General of Biosecurity 2012

Submission 31st January 2013

PIBAA
C/O 262 Argyle Street, Hobart
Tasmania, 7000

31st January 2013

Mr Stephen Palethorpe

Committee Secretary

Senate Standing Committee on Rural & Regional Affairs and Transport

Dear Mr Palethorpe.

Re: Biosecurity Legislation

Thank you for the opportunity to comment, on behalf of the Primary Industry Biosecurity Action Alliance (PIBAA), on the draft Biosecurity Bill which is before the Senate. PIBAA would also like the opportunity to appear at the Committee hearings on the 8th February 2013.

PIBAA supports the review and overhaul of the Quarantine Act which after a century fails to reflect the biosecurity environment which we currently operate in. However, PIBAA strongly believe that the current process to move the Bill through the Parliament is hurried and proper consultation and process has not occurred.

Primary industry in Tasmania relies on strong biosecurity and quarantine policy to ensure that the long term viability of our respective industries in maintained.

Yours sincerely,

Lucy Gregg

On behalf of the Primary Industry Biosecurity Action Alliance (PIBAA)

Background

The Primary Industry Biosecurity Action Alliance (PIBAA) was formed in 2010 to address the decline in biosecurity and quarantine services in Tasmania. PIBAA represents a majority of the peak primary industry bodies in Tasmania: across both terrestrial and aquatic based industries[1]. The farm gate value of those industries represented through PIBAA exceeds a farm gate value of over 2 billion dollars. Since the formation of PIBAA strong dialogue and consultation has now occurred between Government and industry already resulting in some positive outcomes.

Primary industry in Tasmania plays an integral role in the Tasmanian economy and many of the industries have developed and expanded due to the relative pest and disease freedom the state offers. Such examples of this reliance on disease freedom include salmon, oysters, fruit and vegetables.

The PIBAA group have developed two documents Biosecurity For Our Future (June 2010) and Biosecurity Is Our Future (To be released in 2013). Both documents highlight 23 biosecurity priorities for primary industry in Tasmania which cover a diversity of topics from service delivery, refuse disposal, import procedures and communications.

The number one priority for PIBAA is the formal recognition of Tasmania as an area of regional biosecurity differentiation: our unique pest and disease status should be recognised and maintained to ensure that pest and disease incursions do not threaten the long term viability of primary industry in Tasmania. As a region heavily reliant on primary industries the consequences of an exotic pest incursion would have a far greater affect on the Tasmanian economy than in most other states.

Our area freedom from certain pests and diseases has many advantages for Tasmania including:

- Increased market access in overseas markets
- Reduced chemical usage and production costs
- Reduced WHS risk due to reduced chemical usage
- Brand enhancement for the “clean and green” image
- Downstream branding – hospitality and tourism

Introduction

PIBAA supports the review and overhaul of the Quarantine Act which after a century fails to reflect the biosecurity environment which we currently operate in. Many of the proposed changes to the legislation addresses the weaknesses in the existing legislation however some of the proposed changes within the Bill do cause some considerable concern for primary producers in Tasmania.

Whilst PIBAA recognises that the new legislation is an improvement we note that the Act is an ‘umbrella’ Act and much of the critical detail will be in the yet to be released regulatory documents. It is essential that industry has the opportunity to comment on these other regulatory instruments prior to them becoming legally binding.

PIBAA does make some comments in relation to the Beale Recommendations and the proposed legislation. Firstly, of the 85 Beale Recommendations only 19 have been adopted in some format and

[1] See Appendix A

many of the important and significant issues raised in Beale have not been addressed. PIBAA are disappointed that some of these Recommendations have not been adopted as they could have further improved the biosecurity processes in Australia.

Furthermore this proposed legislation fails to demonstrate the national approach to the Biosecurity Continuum: that biosecurity is a partnership and responsibilities are shared. In fact the new model under the legislation is even less consultative than the current model. If biosecurity is truly to be a shared responsibility in culture (not just financial) then the legislation needs to be amended to be more inclusive of industry and other stakeholders.

Furthermore the there were over 60 submissions received in 2012 as feedback on the exposure draft. The revised draft has failed to take into consideration the theme and intent of many of the submissions and largely remains unchanged from the original exposure draft. This does cause considerable concern for PIBAA as it questions the validity of the consultation process.

Chapter 1: Preliminary

Whilst there are many reasons for there to be consistency across state jurisdictions that should not be to the detriment of the states economy or capacity to generate income.

Whilst industry (particularly primary industry) has been the driver for a range of biosecurity issues we must not neglect the social and environmental consequences. In regions such as Tasmania, preservation of World Heritage forests and other environmentally sensitive areas is essential as it is also financially significant to the states economy both now and into the future.

It is important that the proposed appropriate level of protection (ALOP) model, currently focussed on trade risks, capture the gamut of the biosecurity risks which affect a jurisdiction. When does an ALOP take into consideration brand image, tourism, hospitality, natural environment or regional economies of scale? When an ALOP is profiled against a specific pest threat it does not take into consideration the broader consequences of a biosecurity breach. In Tasmania a primary industry can be the mainstay of a regional community, it can be the item on every single menu across the state, it can be the iconic image on tourism advertisements, it can provide the impetus to keep local schools and shops open.

Tasmania should be able to exercise its rights in relation to protecting its' borders to ensure that the Tasmania's biosecurity status and economy are maintained.

Whilst it has been argued that having one single national approach makes market access easier and reduces confusion there are currently many countries that Australia deals with that regional differences for pests and diseases are recognised; two examples being USA and China. Australia respects the rights of foreign countries to set regional zones based on quarantine status and therefore Australia should recognise within its own federation the rights of states to have their own quarantine zones and restrictions as well.

The proposed legislation currently also commits Australia to applying the Phytosanitary Agreement (SPS). Whilst we support that the there is a level of commitment to the SPS Agreement it should be done so on a provisional basis. Given that this commitment will be enshrined in legislation it does have the potential to undermine or conflict with Australia's best interest at some stage in the future.

Chapter 3: Managing Biosecurity Risks (Goods)

PIBAA believes that to protect Australian industries from pest and disease threats thorough import risk assessments (IRA) should be undertaken. The current IRA process will be superseded by the proposed Biosecurity Import Risk Analyses (BIRA) which at this point in time does not appear to be a truly independent process and the details of undertaking a BIRA are yet to be defined in any detail.

The responsibility to commence the BIRA is at the discretion of the Director of Biosecurity and/or the Agriculture Minister and can be taken without a clear set of guidelines or requirements. PIBAA fear that the decision to undertake a BIRA may be overlooked if industry is not appropriately advised or consulted. Industry request both the ability to have input in the decision making process and the terms of the assessment, if ultimately it is decided to undertake a BIRA.

Also given the broad scope of the Director of Biosecurity and the integral link that this position will have from process through to decision making it also raises the potential for conflict of interest within this position and even within the department supporting this position.

At this point the BIRA process is to be detailed in the Regulations however PIBAA fear that the process and consultation requirements will not meet industry expectations .

In relation to Australia's ALOP the current definition, as proposed in the legislation, is loose, open for interpretation and largely focussed from the perspective of trade. The ALOP process from a national perspective does not take into the consideration the regional consequences of the risk nor does it fully encompass the consequences of biosecurity risks across a much broader perspective.

As stated previously the use of ALOP is largely confined to the trade aspects of import process however the implications of biosecurity breaches can be far greater. Pest incursions can have substantial affects on regional biodiversity and ecosystems which in turn can put the environment, industry and public health and well-being at risk.

Tasmania has several mitigating factors which highlight the requirement for risks to be assessed at a regional level. With Bass Strait acting as a natural barrier and strong barrier protection through entry points the ability for Tasmania to maintain a separate quarantine zone is feasible. As already demonstrated, Tasmania has successfully managed to maintain area freedom from several mainland pests such as fruit fly.

Of concern is the omission of the use of the Eminent Scientists Group (ESG) (or similar body) which would be responsible for reviewing submissions and research in relation to IRA's. The current ESG provided balance and security to the import process by applying scientific rigour to the process. The current proposed import process does not include a strong independent and scientific reference group which will ensure impartiality and integrity.

Furthermore the proposed legislation does not provide an independent appeal process which is based on facts and science.

Chapter 6: Prevention & Control Measures

The new measures to be introduced through the proposed Bill cause concern as the rights of states to maintain their own laws could be threatened. Whilst the intent of the proposed Bills is to work co-

operatively with the states, the state legislation can potentially be overridden by the Director of Biosecurity where it is deemed the state is undermining the Commonwealth.

Some of the actions which can be taken under the Chapter can be perceived favourably such as the establishment of biosecurity zones however at the same time these powers could be used to the detriment of state jurisdictions as well.

The proposal for the Commonwealth to intervene and manage exotic pest incursions across all state jurisdictions could be advantageous to ensure a quick and co-ordinated response. However, the decision pathway to implement the control measures appears to be left again to the discretion of the Director of Biosecurity. Will this sole person be responsible for making the call whether to eradicate the pest or simply act to control the pest? There are many technical and scientific considerations to be made when assessing an incursion and this needs to be more clearly qualified in the legislation.

The proposed legislation should also be able to provide some degree of security for primary producers against individuals who inadvertently or knowingly compromise Australia's biosecurity status. Whilst Codes of Practice and similar, apply to many industries to manage biosecurity risks, such control measures do not extend to "hobbyists", "recreational users" and other such practitioners. It is widely acknowledged that such groups pose some of the highest risks for primary industry due to their lack of knowledge, experience and authorities inability to reach, educate and monitor such groups effectively.

Chapter 7: Approved Arrangements

Approved Arrangements are, in principal, a cost effective and resource friendly option however they are only as good as the rigour and integrity built into the auditing and monitoring process. Also the legislation lacks some detail which no doubt will be included in subordinate legislation however terminology such as "fit and proper person" does need a more explicit explanation within the Bill.

Chapter 8: Emergency Procedures

The current legislation does not take into consideration already existing emergency arrangements which exist and/or are being developed in various sectors.

Chapter 11: Governance & Officials

PIBAA are concerned that a substantial amount of power has been installed upon one person who will have the power "to interpret and apply the legislation" at their discretion. The Director of Biosecurity will have the ability to make decisions in relation to biosecurity seemingly without a science based, independent panel of appropriately skilled personnel to underpin the process.

.PIBAA fundamentally want to see the re-introduction of a group/panel such as the Eminent Science Group or at the very least the legislation should ensure that there is a mechanism to appoint such a group where it is deemed appropriate to establish such a reference group.

As previously stated PIBAA believe that the Director of Biosecurity could be placed in a position of conflict and even within the Department there could be contrasting pressures which could compromise the integrity of the position. There also does not appear to be the ability to utilise

expertise in other Departments such as Environment or Health which is a shortcoming of the legislation. Furthermore the breadth of the legislation, across such a broad range of commodities, services and process will place an enormous workload on one individual and PIBAA question the ability of one person to take on such a mammoth task with professionalism.

Whilst it is noted that an Inspector General of Biosecurity has been appointed to deal with appeals through the BIRA process, this position is once again not underpinned by an independent, science-based group which can debate the science and reason behind the appeals process.

Furthermore it is contradictory to allow an appeal process to proceed for some issues as detailed in Chapter 12 but not for other issues, or allow appeals based on the process but not on the outcomes. Given that the Director of Biosecurity may follow the BIRA process (as required under the yet to be determined Regulations) there does not appear to be any requirement for the Director of Biosecurity to make a binding decision based on the process.

The list of Reviewable Decisions, whilst extensive, does have some obvious omissions, particularly in relation to appealing an import decision from the perspective of stakeholders who are appealing against a decision from DAFF to allow imports of particular products. Given that the current legislation has taken over a century to change there needs to be some flexibility within the legislation to add other categories of appeals (or case-by-case criteria) to the list of Reviewable Decisions.

Chapter 12: Miscellaneous

The issue of full cost recovery causes considerable concern for industry for several reasons. Firstly, the delivery of biosecurity services is to the advantage of general population, especially in a country which has a strong reliance on primary industry across all states and territories. Strong biosecurity protects ecosystems, world heritage forests, tourism, public health and a range of other categories – it is not just there to protect growers, farmers, harvesters and producers.

Secondly, breaches to biosecurity are often not directly linked to the actions of commercial operators who could risk their own potential livelihood by introducing contaminated product. Biosecurity breaches may be due to tourists or recreational users who do not adhere to farm hygiene policies or codes of practice to ensure that best practice is implemented. Biosecurity incursions have been the result of home gardeners, backpackers, bushwalkers (to name a few) who inadvertently have spread pests and diseases which have caused considerable costs and disruption to commercial industries.

Cost sharing should not be used as an excuse to water down border protection. Border protection is clearly a community service obligation of the government.

PIBAA recognise that some fee for service activities should occur but primary industry should not be responsible for covering the costs due to the demonstrated public good that biosecurity has to the Australian public. The Australian Government has a duty of care to protect Australia's borders from pest and disease incursions and each state should also be able to exercise that same duty of care based on regional ALOP's.

PIBAA would recommend that the Beale Recommendation 23, the establishment of a Biosecurity Advisory Council, should also be adopted. The expertise offered by this group could ensure that policy direction and resource commitments of DAFF, in relation to biosecurity, is relevant and demonstrates the intent of the Biosecurity Continuum of greater partnerships between stakeholders.

Inspector-General of Biosecurity Bill

Whilst PIBAA believe that Inspector General of Biosecurity would be beneficial to the Biosecurity processes within DAFF, in the current guise we do not believe that the role or powers of such a position are maximised. The position of Inspector-General should be independent of DAFF and have the scope to investigate all matters pertaining to Biosecurity whether it be process or performance based. Given the powers invested in the Director of Biosecurity and the removal of the ESG it becomes even more imperative to ensure that an independent review process exists.

Conclusion:

PIBAA welcomes the opportunity to comment on the proposed Biosecurity Bill 2012which will reform Australia's biosecurity system. We stress that we are uncomfortable with the current timeframes and the consultation process. Given that we have waited for over a century to amend the current legislation we believe that more time needs to be put into the process to ensure that the final outcome is beneficial to industry, environment, Australia and all those involved in the biosecurity continuum.

A**ppendix A – PIBAA Members:**

Agricultural Contractors of Tasmania

Forest Industry Association of Tasmania

Fruit Growers Tasmania

Hop Products Australia

Huon Valley Council

Nursery & Garden Industry Tasmania

Oysters Tasmania

Poppy Growers Tasmania

Primary Employers Tasmania

Tasmanian Famers and Graziers Association

Tasmanian Abalone Council

Tasmanian Aquaculture Council

Tasmanian Crop Pollinators

Tasmanian Pork Alliance

Tasmanian Agricultural Productivity Group

Tasmanian Seafood Industry Council

Tasmanian Salmonid Growers Association

Wine Tasmania