
3 ORGANISATION STRUCTURE

3.1 Introduction

The way in which the Commonwealth's biosecurity functions are organised is important. Clarifying the scope of the organisation(s) that undertakes these functions will create a biosecurity regime giving appropriate weight to each element of the continuum, as well as facilitating market access for Australia's agricultural products.

Good organisational structures facilitate communication between functions where there needs to be effective feedback loops—for example, between risk intelligence, risk assessment and risk management, and between monitoring and surveillance of pest and disease status and export certification. Similarly, good organisation ensures appropriate separation of functions which should be conducted at arms length—for example, risk assessment/management versus the negotiation of trade access for unrelated commodities/sectors.

Good governance arrangements are essential in ensuring appropriate relationships among the Commonwealth's biosecurity organisation(s) and between them and the responsible Minister(s), the Commonwealth Parliament, the states, businesses and the general community. This will determine the nature and extent of political, as opposed to expert scientific, influence on decisions such as risk assessment and risk management. It will also assist the monitoring of pest and disease status, surveillance to identify pest and disease incursions as early as possible and respond to any such incursions.

Setting the Appropriate Level of Protection (see Chapter 5) should be the preserve of the political process. Through normal democratic processes the Government should articulate the national interest: the Australian community's balancing of the advantages of trade and international travel, with risks to biosecurity which trade and travel may entail.

Equally, Import Risk Analyses, and the measures taken to meet Australia's Appropriate Level of Protection, are required under Australia's international treaty obligations to be based on sound science and to be consistently applied. These decisions should therefore be distanced from political considerations and influences.

3.2 Current arrangements

At the Commonwealth level, nearly all biosecurity functions are encompassed within the Department of Agriculture, Fisheries and Forestry. Other agencies have specific roles, for example, the Department of Health and Ageing, Food Standards Australia New Zealand and the Department of the Environment, Water, Heritage and the Arts.

Responsible to the Minister, the Secretary of the Department of Agriculture, Fisheries and Forestry is responsible for the efficient, effective and ethical conduct of the Department's activities. In relation to Biosecurity Australia the financial, but not overall management and policy, powers are vested in the head of that organisation rather than the Secretary.

The Secretary is also the Director of Animal and Plant Quarantine for the purposes of the *Quarantine Act 1908*. This position provides the Secretary with additional powers and obligations. In deciding whether to allow particular animal or plant material to be imported and if so under what conditions, the Director of Animal and Plant Quarantine's powers are required to be exercised in accordance with specified criteria under the Act. These do not include what may be thought of as political considerations. Unlike other policy areas, the Secretary cannot be directed by the Minister in the exercise of these powers.

The extent of perceived independence from the political process in the exercise of biosecurity powers will be affected by the extent to which Secretaries are perceived to be impartial and independent. As the focus has shifted from the independence and permanency of the Australian Public Service, to being, and being seen to be, 'responsive' to the government of the day, there have been changes to the way Secretaries are appointed and can be removed. These changes have occurred progressively, but post-date the framework for the Director of Animal and Plant Quarantine. The way in which Secretaries are appointed and may be moved from their position is therefore relevant if the perception, as well as the reality, of robust independence in the face of political pressure is to be maintained.

It is now the case that Secretaries have little formal protection against dismissal during the course of their term. Governments do not have to demonstrate incompetence, illegal or inappropriate behaviour or loss of capacity—a simple conclusion that the Secretary has lost the confidence of the responsible Minister is sufficient to justify dismissal.

For their part, Secretaries have, subject to the provisions of the *Public Service Act 1999* and the Public Service Commissioner, effective control over the appointment, promotion, transfer, dismissal or the offer of a redundancy package to the senior officers of their department. In practice the Secretary has considerable discretion.

There are four groups within the Department of Agriculture, Fisheries and Forestry with responsibility for aspects of biosecurity. They are:

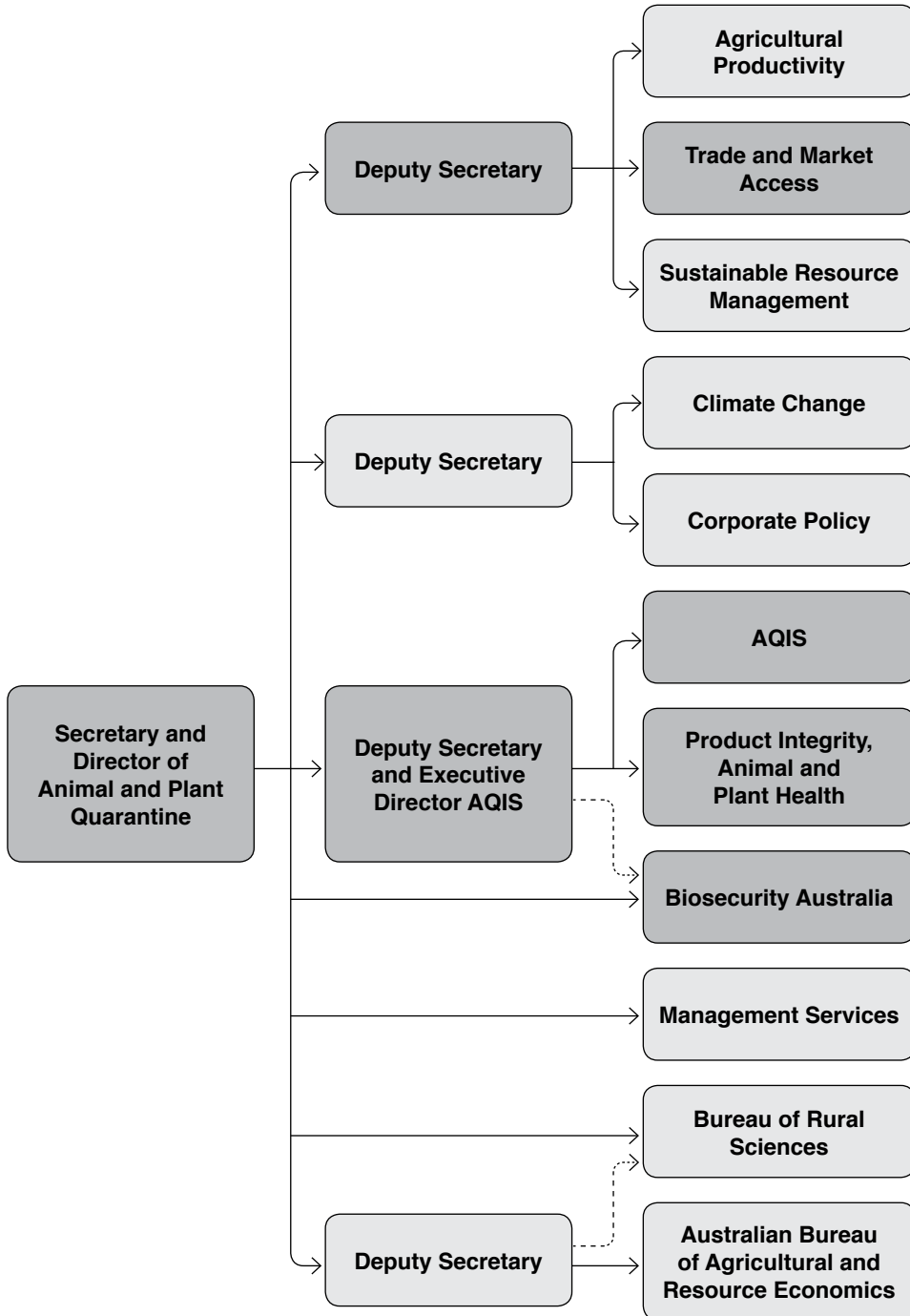
- Biosecurity Australia—which conducts risk assessments, including Import Risk Analyses, develops risk management recommendations for biosecurity policy as well as providing scientific advice to the Director of Animal and Plant Quarantine and AQIS, including in support of Australia’s efforts to access international markets. Currently, there are 134 full-time equivalent officers in Biosecurity Australia;
- AQIS—which develops operational procedures for risk management, makes a range of decisions under the *Quarantine Act 1908* (including import permit decisions), provides export certification and delivers biosecurity services. There are currently 3,067 full-time equivalent officers working in AQIS;
- PIAPH—which coordinates pest and disease preparedness, emergency responses and liaison on inter- and intrastate biosecurity arrangements for the Commonwealth, in conjunction with the state governments. There are 162 full-time equivalent officers currently working in PIAPH, including the Chief Veterinary Officer and the Chief Plant Protection Officer; and
- Trade and Market Access Division—which has a role in biosecurity, including assisting efforts to gain and maintain access to overseas markets and the coordination of international agricultural cooperation and capacity building. There are currently 106 full-time equivalent officers working in the Trade and Market Access Division.

The organisation of these groups in terms of the overall Departmental structure is shown in Figure 3.

The current arrangements, in particular the separation of Biosecurity Australia from AQIS and its subsequent creation in 2004 as a Prescribed Agency under the *Financial Management and Accountability Act 1997*, reflect concern expressed by some agricultural sectors that risk assessment and risk management decisions should be explicitly separated from considerations of market access. The proponents of this change believed that the biosecurity of agricultural sectors focused principally on the domestic markets was being ‘traded-off’ to secure improved access to foreign markets for major exporters.

Whether that concern was justified or not, providing Biosecurity Australia with financial accounting independence from the Secretary—the principal effect of making it a Prescribed Agency—was not an appropriate response. This is because for management, policy and personnel purposes, Biosecurity Australia continues to be part of the Department and subject to the Secretary’s control. Furthermore, the actual decisions which affect businesses—policy determinations, the granting of import permits and the conditions under which imports (if any) take place—continue to be taken by the Secretary in his or her role as the Director of Animal and Plant Quarantine. The Secretary

Figure 3 Department of Agriculture, Fisheries and Forestry organisational chart (as of September 2008)



also continues to be directly responsible for the control and direction of the Department's contribution to the negotiation of access to other markets. In short the remedy, prescribed agency status for Biosecurity Australia, did nothing to address the perceived ill.

3.3 Current debates and views in submissions

3.3.1 Recent reports

As part of its remit, the Panel has been asked to review the recommendations of earlier reviews—the most comprehensive and notable of which was the Nairn Committee review. On the question of structure, the Nairn Report's recommendations were clear—the functions concerned with biosecurity at the Commonwealth level should be drawn together in a statutory authority (Nairn *et al.* 1996). Its relevant recommendations are shown in Box 5.

BOX 5 Nairn Report recommendations regarding the structure of biosecurity administration

Recommendation 9: The Government establish a statutory authority, to be named Quarantine Australia, to provide quarantine policy and services in accordance with Government policy.

Recommendation 10: Quarantine Australia assume all the functions and responsibilities of the Australian Quarantine and Inspection Service, with the exception of meat inspection.

Recommendation 11: Quarantine Australia and the Australian Customs Service continue to work in close collaboration but remain as separate agencies for the time being.

Recommendation 12: Policy and operational direction for Quarantine Australia be determined by a Board of Directors appointed by and responsible to the Minister for Primary Industries and Energy.

Recommendation 13: The Board of Quarantine Australia assume the responsibilities of the Quarantine and Inspection Advisory Council as they relate to the charter of Quarantine Australia.

Recommendation 14: The Board of Quarantine Australia comprise up to nine members:

- a Chairperson appointed by the Minister for Primary Industries and Energy;
- up to seven members appointed by the Minister following an independent competitive selection process based on skills criteria; and
- a Managing Director appointed by the other members of the Board.

Recommendation 16: The Chairperson of the Board of Quarantine Australia be the Director of Animal and Plant Quarantine under the *Quarantine Act 1908*.

Source: Nairn *et al.* 1996

The Nairn Report considered that a separate entity would serve as a catalyst for a new culture, responding to concerns raised in submissions regarding the performance of Australia's quarantine service. Reasons for recommending an independent statutory authority included: functional independence from the department; a suitable structure for engendering cultural change; potential for greater staff satisfaction; clearer identification of Ministerial and authority responsibilities in enabling legislation; competitive management; greater resource efficiency and flexibility; financial independence; greater community ownership and responsiveness to stakeholders; and more public accountability.

The Agriculture and Food Policy Reference Group also commented on the Commonwealth's organisational arrangements for biosecurity. Its view was that Biosecurity Australia's independence from the policy machinery of government could be enhanced by making it a statutory authority with an independent board. This recommendation was made to address perceptions of political interference in the import decision process (Agriculture and Food Policy Reference Group 2006).

3.3.2 The Callinan Report

The most recent review that the Panel has been asked to consider is the Report of the Equine Influenza Inquiry conducted by the Hon. Commissioner Callinan AC. Commissioner Callinan made no specific recommendations in relation to the way in which the biosecurity function should be structured, his terms of reference being restricted to the particular circumstances associated with the outbreak of equine influenza in Australia. Nevertheless, he found that the structural separation of AQIS and Biosecurity Australia had caused communication and cooperation difficulties between the two organisations, a fact which contributed to the circumstances of the outbreak of equine influenza. For example, he found that:

‘With that independence [separation of Biosecurity Australia's decision makers from the operational arm of AQIS], an absence of a protocol for regular consultation with AQIS with respect to horse imports, and a general lack of familiarity with actual activities on the ground ... has come a degree of remoteness from the risks of equine infection and the measures necessary to prevent it.’ (Callinan 2008, p. 50)

To help overcome these difficulties in the short term, Commissioner Callinan recommended that the Secretary appoint an officer with overall responsibility for the implementation of biosecurity measures for the importation of horses, and an Inspector General of Horse Importation, whose responsibility should be to check that those measures are being implemented.

3.3.3 Views from submissions

In its Issues Paper, the Panel sought comment on organisational structure, governance and the appropriate relationships with the responsible Minister (Quarantine and Biosecurity Review Panel 2008). In doing so it focused on Import Risk Analyses and the Director of Animal and Plant Quarantine's role in making policy determinations about proposed imports and import permit decisions. It described two different approaches, one in which decisions are taken by a democratically elected Minister acting on advice, such as occurs with the *Environment Protection and Biodiversity Conservation Act 1999* and the *Foreign Acquisitions and Takeovers Act 1975* and one in which decisions are placed in the hands of either a public servant, or a Tribunal/Authority with appropriate security of tenure.

The role of the Minister in decision making was discussed in numerous submissions to the Panel, with recommendations for either a greater or lesser involvement, particularly in decisions relating to Import Risk Analyses and associated import policy determinations. Where greater involvement was suggested, it tended to be linked with the need for broader community views to be included in the decision making process. For example, the Australian Chicken Meat Federation argued that while risk analysis should be science-based, significant judgements were required involving social, environmental, commercial and economic parameters. On that basis the Federation supported decision making by the Minister.

‘It is for this very reason that ACMF strongly supports the view that the ultimate decision should be vested in the Minister for Agriculture who is best placed to weigh the various elements based on the advice from his department and other experts.’ (Australian Chicken Meat Federation submission, p. 3)

Apple and Pear Australia Limited also supported a model where responsibility for decisions rests with the Minister. Its view was that the *Quarantine Act 1908* was the responsibility of the Parliament, and that Ministers should take responsibility for decisions being made under that Act. Shipping Australia and the Australian Food and Grocery Council also shared this view.

‘The decision making and the responsibility for the decisions must ultimately rest with the Minister and with the government of which s/he is a member.’ (Apple and Pear Australia Limited submission, p. 16)

‘In Shipping Australia's view, ultimate decision making power on risk policy and import permits should rest with the Minister.’ (Shipping Australia Limited submission, p. 6)

‘It is essential that the Minister, acting on behalf of all stakeholders and the community, is directly involved in this decision making process ...’
(Australian Food and Grocery Council submission, p. 8)

Other groups argued for decision making that is independent of political considerations, at least in regard to import decisions. This was seen as important in the context of international treaty obligations and the potential flow-on effects if Australia were perceived to be making decisions based on sectional interests rather than scientific analysis.

Groups that opposed Ministerial involvement in import decision making were more forthcoming in their oral comments to the Panel than in their written submissions. Some pointed out that there were export access consequences to import decisions that were perceived by trading partners to be politically rather than scientifically based. These groups were often unwilling to go ‘on the record’ because of concerns that doing so would further affect bilateral relations and export trade access. That there were consequences, in terms of speed and priority given to market access requests, was also heavily hinted at in the Panel’s international consultations, although interlocutors were careful to avoid any suggestion that this amounted to ‘retaliation’ which would not be consistent with their obligations under the SPS Agreement.

The joint submission from the Australian Dairy Industry Council and Dairy Australia was one that did openly discuss the issue of perceived political interference and implications for market access. The submission described the dairy industry’s experience with the reinstatement of butteroil access to Thailand following Australia’s decision to restrict prawn imports. It argued that the perception of political interference in the prawn decision resulted in a very slow resolution of an issue affecting the dairy industry.

‘They [the Thai authorities] were very clear that in their minds the [Australian] process is neither scientific nor timely but political and designed to protect a local industry from cheaper, more competitive imports. Whether or not this is true, it is the perception in Thailand and it resulted in a very slow resolution of an issue affecting the Australian dairy industry. Australian exports of butteroil to Thailand are worth \$A10 to 20 million per year.’ (Australian Dairy Industry Council and Dairy Australia submission, p. 7)

Potential or perceived conflicts between Australia’s market access objectives and biosecurity decision making were raised by a number of organisations. The NSW Farmers’ Association proposed that to overcome possible conflicts, AQIS and Biosecurity Australia should be separated from the Department of Agriculture, Fisheries and Forestry. Australian Pork Limited also noted the potential for trade considerations to affect biosecurity decisions and argued for the role

of the Director of Animal and Plant Quarantine to be separate from that of the Secretary of the Department.

‘Trade and quarantine issues are separate and the administration of these issues should be separate and distinct functions. The Director of Animal and Plant Quarantine should be separated from the role of the Secretary of the Department.’ (Australian Pork Limited submission, p. 30)

The Quarantine and Exports Advisory Council provided arguments in favour of a model where the decision making body has a level of independence from political government, akin to the Reserve Bank or the Australian Competition and Consumer Commission.

‘QEAC now takes the view that putting all of biosecurity in a Statutory Authority can be a very good solution, provided ... It is truly independent and seen to be so in the way that the Reserve Bank and ACCC are seen by all ...’ (Quarantine and Exports Advisory Council supplementary submission, p. 4)

Poor communication between AQIS, Biosecurity Australia and to a lesser extent, PIAPH was another issue of widespread concern. Many of the Panel’s interlocutors pointed to an increasing tendency for AQIS and Biosecurity Australia to behave defensively rather than collaboratively in their decision making. They felt that policy and operational elements of the Department had become disconnected. Some believed that Biosecurity Australia was not sufficiently aware of the practical difficulties of implementing its recommendations, while others argued that AQIS failed to provide Biosecurity Australia with up-to-date intelligence on border interceptions and post-border incursion data. Some illustrative observations from submissions are shown in Box 6.

Business representatives pointed to ‘buck passing’ between the organisations. Commissioner Callinan found:

‘... [there is] uncertainty about the role Biosecurity Australia has in relation to AQIS operational and procedural matters.’ (Callinan 2008, p. 95)

State governments and the business organisations claimed that since the repositioning of the Chief Veterinary Officer and Chief Plant Protection Officer into PIAPH, AQIS had ‘lost interest’ in post-border arrangements to the great detriment of the biosecurity continuum. All pointed to difficulties in effectively communicating and consulting with the Commonwealth on biosecurity issues.

BOX 6 Observations in submissions regarding institutional structure**Quarantine and Exports Advisory Council**

‘In QEAC’s opinion, issues are now referred to BA for formal advice that would have been quickly dealt with inside the one organisation prior to BA’s formation ... BA’s removal, however, from the operational aspects and industry pressures on the day to day implementation of these policies, has left AQIS as the interface with industry ... For these reasons, QEAC believes there are arguments for putting quarantine and biosecurity all back together.’ (Quarantine and Exports Advisory Council submission, p. 9)

Growcom

‘Growcom is keen to see a strengthening of the relationship (communication and consultation) between BA and AQIS. Industry appreciates the reasons for the current ‘arms’-length’ relationship. However, we believe it is critical to maintain integration between quarantine policy and operational functions, which currently appears to be absent or poor.’ (Growcom submission, p. 17)

CropLife Australia

‘When dealing with both AQIS and BA, it is evident that there is little communication between the two agencies and so efficiency and communication may be improved by amalgamating the agencies.’ (CropLife Australia submission, p. 2)

Food and Beverage Importers Association

‘From our perspective, the current structural arrangements are not working and do not provide an adequate framework for assessing and managing risk across the continuum of quarantine ... In our view there should be a greater integration of functions and responsibilities in quarantine administration. AQIS, BA & PIAPH should be brought together into one functioning unit.’ (Food and Beverage Importers Association submission, p. 8)

A related point was that AQIS had lost its scientific and technical ‘champions’ with the segregation of scientific risk assessment skills into Biosecurity Australia, the Chief Veterinary Officer and Chief Plant Protection Officer in PIAPH. Linked with the greater management challenges flowing from the large increase in staff numbers brought about by the Increased Quarantine Intervention (see Chapter 7) and a greater reliance on cost recovery, it was argued that this had led to AQIS being an organisation led by managers rather than people who understood the fundamentals of the scientific and professional issues associated with biosecurity.

‘The significant increase in recruitment of Quarantine Officers as part of the Increased Quarantine Intervention was not matched by an increase in recruitment of scientific staff in the Operational Science Program (OSP). This was despite the increase in training load, diagnostic samples and requests for advice that followed the increase in inspection capacity and intervention rates in line with the growth in size of the Quarantine Inspectorate.’ (Dr Phillip Widders submission, p. 4)

‘Historically AQIS has had a strong science based and scientific operational capacity within the Grains Program. Prior to the establishment of BA, AQIS had their own scientific staff and an experienced and knowledgeable operational staff, with over 100 years of experience in grain exports.’ (GrainCorp Operations Limited submission, p. 5)

It was generally agreed that AQIS, Biosecurity Australia and PIAPH should be more closely integrated. However, there was not a unanimous view on the institutional arrangements that would achieve this most effectively. Bringing them together in a single unit was supported, either in the Department or as a separate statutory agency. The National Farmers’ Federation did not have a strong view on the matter, pointing instead to the principles for the system.

‘On the subject of structures within government ... NFF does not have a strong view on this, rather we believe that the focus of the Government should remain on ensuring the effectiveness of the system through improving the work culture within relevant agencies and by making other necessary improvements to the system.’ (National Farmers’ Federation submission, p. 7)

One submission made to the Panel in-confidence suggested the merger of AQIS functions with the Australian Customs Service, creating a single border agency. This would be akin to the approach taken in the United Kingdom, Canada and the United States (see Chapter 10) where responsibility for all border activities has been devolved to a single, multi-functional border agency. During the Panel’s overseas consultations concerns were raised by biosecurity officers involved that this approach severed a valuable link between the development of biosecurity risk management strategies and the setting of priorities at the border. The Panel also heard that while some of the predicted benefits of this approach were realised, unpredicted costs were also incurred, such as the difficulty associated with maintaining a detailed and timely flow of information between these multi-functional single border agencies and the agencies responsible for developing and implementing biosecurity risk management measures.

3.4 Panel's consideration

The Panel has concluded that the current grouping of functions and governance arrangements does not facilitate the **One Biosecurity: a working partnership** approach favoured by the Panel. In particular, it believes the current arrangements do not support:

- a clear role for the Government and the Parliament in setting Australia's Appropriate Level of Protection and Import Risk Analysis guidelines;
- an appropriate distancing of science-based analysis and decision making in relation to Import Risk Analyses and import measures from political influence;
- sharing of information and a common mission across the Commonwealth's biosecurity agencies; and
- relationships with the states and the private sector that are as effective as they could be in supporting the working partnership embodied in the notion of **One Biosecurity: a working partnership**.

The Panel believes that structural and governance changes are a necessary, although not sufficient, condition to underpin a more integrated and focused approach to biosecurity.

One model is a single border agency, modelled on the approach taken by the United Kingdom, the United States and Canada, drawing together the border functions of AQIS, the Australian Customs Service and the Department of Immigration and Citizenship. The Panel does not support this option. Where adopted overseas, it has tended to decrease the focus on conventional biosecurity issues with more emphasis placed on security, terrorism, narcotics and illegal immigrants. In addition, it creates a greater disjunct between the elements of the biosecurity continuum, which is at odds with the integrated approach the Panel is convinced is essential.

3.4.1 Independent science-based decision making on import permits and measures to protect biosecurity

In the Panel's view, there is an unmistakable and widespread perception among Australia's trading partners—and in many quarters in Australia as well—that there has been a high level of political intervention in the Import Risk Analysis process, as well as in relation to market access requests and the application of import permit conditions (risk management measures). The issue was explicitly raised by the majority of international stakeholders with whom the Panel consulted.

Furthermore, it became clear during oral representations to the Panel that a senior representative of a major agricultural organisation was actually under

the incorrect impression that the Minister did indeed currently make, or was capable of directing the Secretary in relation to import permit decisions and associated conditions. Other agricultural organisations underlined the importance of decisions being made by the Secretary, of the Secretary's responsibility to the Minister, and of the Minister's responsibility to the Parliament—as providing a critical chain of political accountability. This approach had the advantage, they believed, of ensuring a broad rather than a narrow view of the probability and consequences of a biosecurity risk arising from proposed imports. By contrast, they believed that decisions made by an independent statutory panel or body would have too narrow a focus on the science and too narrow an economic approach to assessing consequences.

The perception that the current process is responsive to political pressures might well have been created in part by statements made by Ministers of the previous Government or by the robust attitude adopted by some members of the Senate Committee on Rural and Regional Affairs and Transport in the media and in the course of hearings. Statements by Ministers reported in the press—and independently reported multiple times to the Panel in its overseas consultations—include the following:

‘When Downer took the microphone [at a dinner in New Zealand attended by his New Zealand counterpart] other diners recollected, he said “I just want you all to know that all Australian quarantine decisions are science-based” - pause - “it’s called political science.”’ (Peter Hartcher, *Vale Alexander the not so great*, Sydney Morning Herald, 4 July 2008, p. 13)

Ministers responsible for the quarantine function appear to have been appropriately proper in their public statements, carefully distinguishing their role from that of the Secretary in relation to the actual statutory decision. The separation of powers between the Executive and the Parliament is not always well understood, either domestically or by our trading partners. Accordingly, robust comments and questioning by members of Parliamentary committees from within the same party as the government of the day are sometimes given more credence as statements of government policy or inclination than they actually deserve.

It is not necessary for the Panel to reach a conclusion on whether there has been actual political intervention in decision making processes, which would be inconsistent with Australia's treaty obligations (for example, Articles 2.2 and 5.2 of the SPS Agreement) or the *Quarantine Act 1908*. Certainly no such finding has been made by the Australian courts or the World Trade Organization Appellate Body or dispute panels. It is sufficient for the Panel to note that it would be possible to put beyond question the independence of the process by changing the governance structure in relation to these decisions. In the Panel's view, this would have significant benefits.

Independence could be assured by amending legislation to provide for an expert decision making panel to make Biosecurity Import Policy Determinations (see Chapter 5) on the basis of criteria consistent with Australia’s treaty obligations. The legislation should provide the expert decision makers, to be called the National Biosecurity Commission, with sufficient security of tenure—that is, length of term and protection from dismissal other than for specified reasons such as loss of capacity or improper or illegal behaviour—to guarantee a robust independence.

The Panel also recommends the establishment of a National Biosecurity Authority (see Section 3.4.3) which will have the executive powers necessary to implement Biosecurity Import Policy Determinations made by the National Biosecurity Commission. Beyond making Biosecurity Import Policy Determinations, the Commission would have a role in providing expert advice to the Authority and the Government on biosecurity policy more generally. Additional functions conferred on the Commission in this Report include:

- making determinations on state biosecurity controls (see Chapter 2);
- determining priorities for Biosecurity Import Risk Analyses after appropriate consultation (see Chapter 5); and
- determining and advising on the National Biosecurity Authority’s internal audit and verification program (see Chapter 8).

The National Biosecurity Commission would be skills-based, not representative. Relevant skills to be specified in the legislation would include natural science skills related to risks of pests and diseases in plants, animals and humans, risk assessment and management, ecology, agricultural and food production and economic assessments. To ensure its efficient and effective operation, the Panel recommends that it comprise between seven and nine members – one of these members will be the head of the National Biosecurity Authority. The Authority will be responsible for providing secretariat and research support to the Commission. The reasons for and functions of the Authority are set out in Sections 3.4.2 and 3.4.3.

Recommendations

- 12 The biosecurity legislation should provide that Biosecurity Import Policy Determinations should be made by an expert and independent National Biosecurity Commission. The Commission’s functions, basis of appointment and decision making rules should be specified under the biosecurity legislation. Its functions should include providing expert advice to the National Biosecurity Authority (see Recommendation 16) and the Government on biosecurity matters more generally.

- 13 The Commission should include members with expertise in natural sciences related to risks of pests and diseases in plants, animals and humans, risk assessment and management, ecology, agricultural and food production and economic assessments. The Commission should comprise no fewer than seven and no more than nine members, including the head of the National Biosecurity Authority.

It is important that the Commissioners and the staff assisting them are protected from undue duress in what can be a highly contested environment. The Panel was told of multiple instances where Departmental, AQIS or Biosecurity Australia staff have been subjected to commentary and questions from Members of Parliament, business representatives, or members of the public, which were more than vigorous and verged on the abusive.

The Panel understands the importance of parliamentary privilege and parliamentary scrutiny. The Panel is not in any sense suggesting that the normal robust nature of the Australian parliamentary relationship with officials, in the context of formally constituted parliamentary hearings, is inappropriate, and it understands that the Parliament takes great care in managing its behaviour. It is important, however, that senior politicians including Ministers, and if necessary the Prime Minister, intervene with a Member or Senator if they believe a line has been crossed leading to robust presentation and questioning becoming abuse, or where they believe that inappropriate direct approaches to public servants are being made and pressure is being applied by Members or Senators.

It seems to the Panel that departmental staff appeared resigned to being subject to potentially inappropriate behaviours from some Parliamentarians, members of the public, business people and their representatives. In the Panel's view they should not have to accept such behaviour. There are Commonwealth laws (principally the Criminal Code) that already criminalise threatening or intimidating behaviour. Relevant offences under the Criminal Code include unwarranted demand with menaces, causing harm to, or obstruction or bribery of, Commonwealth public officials. These laws apply to Parliamentarians acting outside the area covered by parliamentary privilege, as well as to the public at large.

In addition, section 30K of the *Crimes Act 1914* makes it an offence for a person to compel or induce a public servant to surrender or depart from his or her employment where the offender engages in violent conduct, issues spoken or written threats, or intimidates without reasonable cause or excuse.

Under the *Public Service Act 1999* it is clear that Ministers do not have a role in the promotion or transfer of officers below the level of Secretary. This is a cornerstone of the protection of an impartial public service based on merit. Staff employed in Ministers' offices under the *Members of Parliament (Staff) Act 1984* similarly have no role in these personnel decisions.

The Panel is not in a position to judge whether any of the behaviours drawn to its attention exceeded the threshold for criminality or breach of the *Public Service Act 1999*. The Panel understands the passion that many feel if they believe their business, or the businesses of their constituents, are to be subject to the possibility of pests or diseases associated with import competition. The Panel also understands the distress caused to members of the public when subjected to extensive delays or the seizure of goods at the border.

However, that is no excuse for inappropriate behaviour. Inappropriate behaviour is unfair to public officials trying to discharge their duty. Moreover, it induces cautious, defensive, non-communicative and legalistic responses which are inimical to good risk management and which in turn were the subject of widespread criticism to the Panel. It is important that officials are educated to enable them to identify the types of conduct that may amount to offences against them or breaches of the law or the Australian Public Service Code of Conduct. They should also be provided with mechanisms to raise such behaviour with the most senior officers of the agency. This could be in the context of more detailed training on the principles of proper decision making, so that officers can understand what are, and what are not, relevant matters to be taken into account.

There is also precedent for individual statutes to create specific offences of assaulting, resisting, molesting, obstructing, endeavouring to intimidate and interfering with officers in the performance of their duties. For example, both the *Customs Act 1901* and the *Civil Aviation Act 1988* create such offences.

Recommendations

- 14 More training should be provided to biosecurity officials on principles of proper decision making and the types of conduct that may amount to offences against them or breaches of the Australian Public Service Code of Conduct.
- 15 The biosecurity legislation should create a targeted offence of assaulting, resisting, molesting, obstructing, intimidating or interfering with officers in the performance of their duties, analogous to that in the *Customs Act 1901* and the *Civil Aviation Act 1988*.

3.4.2 Sharing information and a common mission across the Commonwealth’s biosecurity agencies.

Current arrangements have made communications and the sharing of a common approach and mission between AQIS, Biosecurity Australia and PIAPH more difficult than necessary. While all three are housed within the one department, they have been allowed, and to some extent encouraged, to develop separate identities. If the biosecurity continuum is to be implemented effectively, there must be close communication between these functions, access across boundaries to skills and a closely coordinated sense of purpose between policy, scientific and operational roles.

The Panel has reached the conclusion that these issues—communication and the development of a critical mass of scientific and professional skill sufficient to change the managerial emphasis of the organisation—would be more effectively handled if all the functions were combined in an agency whose sole function is protecting Australia’s biosecurity status and certifying its exports.

The Panel considered a number of options for governance of this agency.

Option 1: Separate Department of State

Under this option, a separate Department of Biosecurity would be established, responsible to the Minister for Agriculture, Fisheries and Forestry. The National Biosecurity Commission would be established as a statutory, non-executive, decision making and advisory body supported by the Department. The Commission would have the functions discussed in Section 3.4.1.

Under this model the chief executive of the Department would be a Secretary appointed under the *Public Service Act 1999*, usually for a term of three to five years. As is the case with other Secretaries, he or she would have limited protection from dismissal. The Secretary would not appropriately be a member of the Commission.

The members of the Commission would be appointed for fixed terms on the basis of expertise (and desirably after consultation with the states, see Section 3.4.4) and with comprehensive protections against arbitrary dismissal. The staff of the Department would be employed under the *Public Service Act 1999* and its financial management would be subject to the *Financial Management and Accountability Act 1997*.

Option 2: Statutory Authority under the *Financial Management and Accountability Act 1997*

Under this model, a statutory authority—the National Biosecurity Authority—would be established under the *Financial Management and Accountability Act 1997*.

The head of the Authority would be a statutory office holder appointed by the Minister for a term of not less than five years with comprehensive protections from arbitrary dismissal. The National Biosecurity Commission would be appointed on the same basis and in the same manner as for Option 1.

Under the *Financial Management and Accountability Act 1997* the normal practice would be for the head of the Authority to chair any board appointed to assist him/her. Accordingly, if the standard model were to be applied in this case, the head of the Authority would chair the Commission. The Commission would have the same specified decision making and advisory powers as for Option 1 and would not be a management board for the Authority.

However, in this case the Panel believes that the credibility and independence of the Commission would be further enhanced if an eminent Australian were to be appointed as part-time, independent chair of the Commission, rather than having the head of the Authority fill dual roles. The Panel understands that this would be a departure from normal practice, but notes that there have been a number of exceptions to the rule. These include the provision of an independent part-time chair for the Australian Fisheries Management Authority. The head of the Authority would be an *ex officio* member of the Commission.

The role of the Director of Animal and Plant Quarantine would be split between the head of the Authority and the National Biosecurity Commission. The head of the Authority would undertake the statutory functions of the Director of Animal and Plant Quarantine set out in the *Quarantine Act 1908*, including making individual import permit decisions either directly or by delegation. Recognising this important role, the head of the Authority would be referred to as the Director of Biosecurity. The role of making Biosecurity Import Policy Determinations will be undertaken by the Commission.

The legislation would provide for the Minister to give the Commission and the Director of Biosecurity directions through a legislative instrument(s) in relation to the Appropriate Level of Protection and Guidelines for its application (see Chapter 5). Similarly the Minister could direct the Director of Biosecurity in relation to policy matters generally, providing that these directions are published in the Authority's Annual Report and tabled in the Parliament. This could be important in relation to those matters bearing on Commonwealth-state relations, monitoring and surveillance and response, as well as priorities on the conduct of Biosecurity Import Risk Analyses in order for Australia to meet its bilateral trade commitments.

The Minister would not have a role or power to direct the Commission in relation to the conduct or outcome of an individual Biosecurity Import Risk

Analysis or Biosecurity Import Policy Determination, including measures to be applied to proposed imports. The legislation would also prevent the Minister directing the Director of Biosecurity, or his/her delegate, in relation to an import permit decision.

The Authority would be a statutory agency for the purposes of the *Public Service Act 1999*. The staff of the Authority would be employed under the *Public Service Act 1999* and its financial management would be subject to the *Financial Management and Accountability Act 1997*. As mentioned earlier, the staff of the Authority would provide secretariat and research support to the Commission.

Option 3: A *Commonwealth Authorities and Companies Act 1997* body

This is the option recommended in the Nairn Report. It would see the biosecurity body being provided with greater independence from the Government in relation to its governance. The Commission, rather than being a body whose responsibilities are restricted to specified decisions and advice, would be a governance board. It would have an independent chair, and the Commission would appoint and if necessary dismiss a Chief Executive. The Commission would continue to be subject to directions from the Minister and be subject to the normal obligations to report to the Parliament. The staff of the body need not be employed under the *Public Service Act 1999*, and it would similarly have greater flexibility in relation to financial matters.

3.4.3 Consideration of the options

Each of these options has advantages and disadvantages. Option 1 involves the smallest degree of change. It continues to provide a strong link through a Minister to the Parliament. It provides for independence in relation to critical decisions but appropriate Ministerial accountability and powers of direction in relation to others. It would facilitate close relationships and interchange with other Commonwealth departments. Its principal disadvantage is that it is not as clearly independent as the other two options.

Option 2 symbolises this independence more clearly, while providing for an appropriate level of Ministerial oversight. It has the advantage of more secure tenure for the Director of Biosecurity. This could be important in providing stable leadership as the skills base and effectiveness are rebuilt over the years ahead.

Option 2 enables the Director of Biosecurity to participate in the Commission without any conflict of responsibilities to the Minister. The appointment of an independent part-time chair for the Commission would further underline its independence and credibility. *Public Service Act 1999* employment and the

conduct of financial affairs under the *Financial Management and Accountability Act 1997* are consistent with the National Biosecurity Authority's status as part regulator and part program deliverer. The Authority would develop a culture and commitment consistent with its focus on biosecurity, while distinguishing itself from the Australian Public Service more broadly.

Option 3 would symbolically and practically provide the greatest degree of autonomy. It would distance day-to-day and strategic management from the Minister, while allowing the Minister appropriate powers of direction. It would encourage different management approaches, possibly drawing on private sector models, and offer the greatest employment and financial management flexibility. It might provide a firmer basis for power sharing with the states (discussed below). On the other hand, this is a governance structure more appropriate to a commercial environment rather than a regulatory and program delivery environment.

In the Panel's view, Option 2 offers the best balance between independence on the one hand, and Ministerial and Parliamentary accountability on the other. It best provides for effective performance of program related and regulatory biosecurity functions.

Recommendations

- 16 The primary biosecurity functions currently within AQIS, Biosecurity Australia and Product Integrity, Animal and Plant Health Division should be brought together in a statutory authority—the National Biosecurity Authority. The National Biosecurity Authority should be an independent authority under the *Financial Management and Accountability Act 1997* with the head of the Authority having the personnel and management powers and obligations of a Secretary under that Act. Its functions should include protecting Australia's biosecurity status in accordance with Australia's treaty obligations and Appropriate Level of Protection, as well as providing secretariat, research and administrative support to the National Biosecurity Commission in the conduct of its functions. The head of the Authority should be referred to as the Director of Biosecurity.
- 17 An eminent Australian should be appointed as the part-time Chair of the National Biosecurity Commission, with the Director of Biosecurity being an *ex-officio* member of the Commission.
- 18 The biosecurity legislation should expressly provide that the National Biosecurity Commission, and officers and other authorised personnel performing National Biosecurity Commission functions, are not subject to direction by the Government in performing their duties in relation to Biosecurity Import Policy Determinations. The legislation should also prevent the Government directing the Director of Biosecurity, or his/her delegate, in relation to an import permit decision.

There are a number of functions within PIAPH that could either remain within the Department or transfer to the new Authority. Working through these issues in detail will be an important role for government. However, based on an initial assessment, the Panel's view is that the following PIAPH functions should remain in the Department:

- policy development in relation to Codex Alimentarius Commission standards and guidelines;
- domestic food regulatory functions;
- the governance role in relation to the Australian Pesticides and Veterinary Medicines Authority; and
- animal welfare policy issues.

In addition to coordinating responses to emergency pests and diseases, the Authority should take on the collaborative role that PIAPH plays in relation to endemic pests and diseases of national significance. This role involves working with Animal Health Australia, Plant Health Australia, the states and business groups and is closely linked in a skills sense to the role the Authority will have for exotic pests and diseases.

Different views were presented to the Panel about whether export inspection and certification functions should be included in a statutory authority, or whether they should best remain within the Department. While the functions are currently separate from the import side of AQIS, there are overlaps in the inspection and management approaches used and skills of officers in terms of technical expertise and business experience. In addition, there are commonalities in the knowledge base of officers with regard to issues such as inspection, auditing and verification.

To a large extent export certification is based on the biosecurity status of Australia, and can be seen as the mirror image of the importing system. The value to be gained through information and system sharing across the two areas is significant. For example, the proposed expansion of Commonwealth programs for post-border monitoring and surveillance of national priority pests and diseases would have relevance for both import and export risk management strategies (see Chapter 7). As a result, the Panel recommends that the export inspection and certification functions should be transferred to the new Authority.

Given the significant concerns expressed about the potential for conflict between trade facilitation and import decisions, the Panel's view is that non-technical trade facilitation functions should remain within the Department of Agriculture, Fisheries and Forestry, with technical advice and representation on market access issues provided by the Authority as required. A standing agreement should be developed between the Authority and the Department on how this would occur in practice.

Recommendation

- 19 The export inspection and certification functions of AQIS should be transferred to the National Biosecurity Authority, but trade facilitation should remain a role of the Department, with technical expertise provided by the Authority as needed.

The Panel considers independent audits provide invaluable assistance in verifying the performance of individual programs and providing an objective overview of the organisation. With this in mind, the Panel recommends the establishment of a position of Inspector General of Biosecurity to undertake independent audits of the biosecurity continuum. The Inspector General of Biosecurity (see Chapter 8) and a small supporting unit would be located in the Department of Agriculture, Fisheries and Forestry. The Inspector General of Biosecurity should be appointed by the Minister for a term of five years.

The functions and powers of the Inspector General of Biosecurity should be set out in the legislation. These should focus on conducting independent system audits of the biosecurity functions for which the National Biosecurity Authority is responsible.

The Inspector General of Biosecurity would have a broader role than that proposed by Commissioner Callinan for the Inspector General of Horse Importation (outlined on p. xxviii of Commissioner Callinan's report). The Panel recommends that the role of Inspector General of Horse Importation should be subsumed within the Inspector General of Biosecurity. To reflect the broader scope of Inspector General of Biosecurity, the person selected for the role could have a wider range of skills than those recommended for the Inspector General of Horse Importation. In particular, it would be desirable for the person to have knowledge of auditing techniques and risk management systems across the biosecurity continuum, in addition to a relevant science/professional background.

Recommendations

- 20 The Commonwealth should establish within the Department of Agriculture, Fisheries and Forestry, a statutory office of the Inspector General of Biosecurity that will audit and report on the performance of the National Biosecurity Authority. The legislation should provide that the holder of this office have appropriate skills in relevant scientific and auditing or systems assessment disciplines. The appointment should be made by the Minister for a five year term and there should not be limitations on the appointment of persons on the grounds that they have been previously employed in the Australian Public Service or otherwise by the Australian Government.
- 21 The functions of the Inspector General of Biosecurity should subsume those recommended by Commissioner Callinan for the Inspector General of Horse Importation.

The National Biosecurity Commission/National Biosecurity Authority would continue the relationships and agreements that exist between AQIS/Biosecurity Australia and the Department of Health and Ageing, the Department of the Environment, Water, Heritage and the Arts and Food Standards Australia New Zealand. While the Panel has made some recommendations to improve the effectiveness of these agreements (see Chapters 5 and 7), it is not proposing changes to the organisational relationships.

A summary of the proposed arrangements is shown in Table 2 below.

TABLE 1 Proposed functional arrangements			
National Biosecurity Commission (includes Director of Biosecurity)	National Biosecurity Authority	Inspector General of Biosecurity	Department of Agriculture, Fisheries and Forestry
Biosecurity Import Risk Analyses and Biosecurity Import Policy Determinations (Chapter 3)	Support for the Commission including in its conduct of Biosecurity Import Risk Analyses and development of Biosecurity Import Policy Determinations	Statutory appointment Independent systems audits of National Biosecurity Authority functions	Non-technical trade and market access negotiations (drawing on technical support from the Authority as needed)
Determinations on state biosecurity controls (Chapter 2)	Administer Biosecurity Act (including import permit decisions, pre-border and border functions)		PIAPH functions not transferred to the Authority
Determine priorities for Biosecurity Import Risk Analyses (Chapter 5)	Export certification		Administrative support for Inspector General of Biosecurity
Biosecurity policy advice generally	Monitoring and surveillance for national priority exotic pests and diseases		
Decisions and advice on the Authority's internal audit program (Chapter 8)	Emergency response coordination		
	Education and awareness raising		

Deciding the portfolio location of the National Biosecurity Authority is not the prerogative of the Panel. The Panel notes that in Europe, the equivalent body is located in the Directorate-General for Health and Consumers. However, this decision appears to have been made on the basis of possible zoonotic consequences of BSE and imported food safety. While these issues are important for Australia, biosecurity threats to primary production and the environment have a higher priority. On that basis, the Panel can see no logic in moving the National Biosecurity Authority from the Agriculture, Fisheries and Forestry portfolio, provided that there is regular and appropriate consultation with other portfolio Ministers.

3.4.4 State role in appointments

As discussed in Chapter 2, the Panel received extensive advice regarding improvements that should be made to the Commonwealth/state relationship in relation to biosecurity. The Panel has recommended a new integrated national approach to biosecurity to enhance this comprehensively.

To be effective and enduring, it will be important for the states to have full buy-in to decisions taken by the Commission. This would be assisted by providing the states with a role in making appointments to the Commission. This is desirable given that the Commission would be empowered under Commonwealth legislation to make nationally applicable decisions in relation to Biosecurity Import Risk Analysis and associated measures to ensure Australia's Appropriate Level of Protection.

There are several precedents for state involvement in appointments including the Australian Competition and Consumer Commission, the National Water Commission and the Murray-Darling Basin Authority. The Panel recommends that the Commonwealth's appointment of the Chair and members of the Commission, other than the Director of Biosecurity, be subject to the support of the Commonwealth and any five of the states and territories. The appointment of the Director of Biosecurity would be a decision for the Commonwealth alone.

Recommendation

- 22 The biosecurity legislation should require that the Commonwealth obtain the support of any five of the states and territories before it can appoint the Chair and members of the National Biosecurity Commission, other than the Director of Biosecurity.

3.4.5 Implementation

Pending the passage of the enabling legislation for the new body, administrative steps could be taken to commence implementation of the proposed structures. Functions could be grouped into a new ‘interim’ authority within the department and appointments made to an interim, advisory National Biosecurity Commission (see Chapters 2 and 6).