

# Biosecurity Bill 2014

What it does, why it's necessary and the next steps for this legislation

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# Agenda

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  - Phytosanitary measures – international standards and obligations
    - World Trade Organisation (WTO)
    - Free Trade Agreements/ others
- Why do we need this legislation
  - Key objectives and policies
- What does it do
  - Overview
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# Overview

## Biosecurity Bill 2014

- Part of a package of five bills to provide for a regulatory framework (which reflects and replaces the *Quarantine Act 1908*) to:
  - manage biosecurity risks
    - the risk of contagion of a listed human disease
    - the risk of listed human diseases entering Australian territory
    - risks related to ballast water
    - biosecurity emergencies and
    - human biosecurity emergencies
  - give effect to Australia's international rights and obligations, including the:
    - *International Health Regulations 2005*
    - *World Health Organization Agreement on the Application of Sanitary and Phytosanitary Measures* and
    - *Convention on Biological Diversity 1992*

# Overview

## Sanitary and Phytosanitary (SPS)

- standards and measures
  - WTO agreements and standards – General Agreement on Tariffs and Trade (GATT) (for goods)
  - **Agreement on the Application of Sanitary and Phytosanitary Measures** (the "SPS Agreement") entered into force with the establishment of the World Trade Organization on 1 January 1995
  - FTAs
  - Others
- Relevant standard-setting bodies “The Three Sisters”
  - FAO/WHO Codex Alimentarius Commission
  - World Organization for Animal Health (OIE)
  - FAO International Plant Protection Convention (IPPC)

# Overview

## Sanitary and Phytosanitary (SPS)

- Other bodies
  - Food and Agriculture Organization (FAO)
  - World Health Organization
  - World Bank
  - African, Caribbean and Pacific Group of States (ACP)
  - Inter-American Institute for Cooperation on Agriculture (IICA)
  - International Organization for Standardization (ISO)
  - International Trade Centre (ITC)
  - Organisation for Economic Co-operation and Development (OECD)
  - Organismo Internacional de Sanidad Agropecuaria (OIRSA)
  - United Nations Conference on Trade and Development (UNCTAD)
  
  - European and Mediterranean Plant Protection organization (EPPO)
  - Secretariat of the Convention on Biological Diversity (CBD)

Why do we need this  
legislation?

# Why do we need this legislation?

## Biosecurity Bill 2014

- will establish a **modern regulatory framework** for the Australian Government to **manage the risk of pests and diseases entering Australian territory** and causing harm to animal, plant and human health, the environment and the economy
  - Replace the *Quarantine Act 1908 (Cth)* and its *regulations*
  - Nature of bio risks has changed (eg volume and nature of travel etc)
  - Risk based - management approach
- designed to **manage biosecurity risks**—including listed human diseases—entering Australian territory, or emerging, establishing themselves or spreading in Australian territory - examples
- also enables management of risks relating to ballast water and sediment and biosecurity emergencies - examples

# Why do we need this legislation?

## Biosecurity Bill 2014

- Implements aspects of the 2008 Beale Review - review of Australian quarantine and Biosecurity released December 2001
- Will give effect to Australia's international rights and obligations, including
  - World Health Organization *International Health Regulations 2005* (International Health Regulations),
  - World Trade Organization *Agreement on the Application of Sanitary and Phytosanitary Measures 1994* (SPS Agreement) and
  - *Convention on Biological Diversity 1992* (Biodiversity Convention)
- Map of compliance with these ...

# Why do we need this legislation?

The Bill will engage, or has the potential to engage the following rights:

Article 6(1) of the ICCPR – Right to life

Articles 7 and 10 of the ICCPR – Right to freedom from torture and cruel, inhuman or degrading treatment

Article 9 of the ICCPR – Right to liberty and freedom from arbitrary detention

Articles 9(4) and 14(5) of the ICCPR – Right to seek review

Article 12 of the ICCPR – Right to freedom of movement

Article 14(2) of the ICCPR – Right to the presumption of innocence (reverse burden provisions)

Article 14(3) of the ICCPR – Right to be free from self-incrimination

Article 14 (7) of the ICCPR – Right not to be tried or punished again for an offence for which a person has already been finally convicted or acquitted

Article 17 of the ICCPR – Right to protection from arbitrary interference with privacy

Article 22 of the ICCPR – Right to freedom of association

Article 24(1) of the ICCPR and Article 3 of the Convention on the Rights of the Child – Rights of the child

Article 6 of the ICESCR – Right to work

Article 11(1) of the ICESCR – Right to an adequate standard of living, including food, water and housing

Article 12 of the ICESCR – Right to health

Article 15 of the ICESCR – Right to enjoy and benefit from culture

Articles 3 and 5 of the Convention on the Rights of Persons with Disabilities – Rights of persons with disabilities.

# Why do we need this legislation?

## Biosecurity Bill 2014 – Continued

### benefits

- Australia's **unique pest and disease status** helps to protect our way of life, including our environment, human health, and the wellbeing of our domestic animals and plants.
- Australia's unique status means that our agricultural industries, environment and communities have remained free of many pests and diseases common elsewhere, giving Australia a **comparative advantage in export markets** around the world.
  - Importance of agricultural industry exports
  - Fisheries
- The Bill provides a strong regulatory framework that enables the management of biosecurity risks in a modern and responsive manner and enhances Australia's capacity to manage biosecurity risks into the future.

# Changes from 2012 bills

## Key changes from 2012 bills

- a clarification that considering the **unique pest and disease status of each region** is part of conducting a Biosecurity Import Risk Analysis.
- condenses provisions relating to monitoring, investigation, and enforcement into one chapter in line with the *Regulatory Powers (Standard Provisions) Act 2014* and modern drafting guidelines.
- contains review powers that the Agriculture Minister can delegate to provide support for the Inspector-General of Biosecurity
  - the Inspector-General of Biosecurity, or any other reviewer, can appropriately review processes within the biosecurity system to allow for **continual improvement** in the assessment and management of biosecurity risks.

What does it do?

# What does it do?

- The Bill aims to promote:
  - the **right to health**,
  - the **right to life** and
  - the **right to an adequate standard of living, including food, water and housing**
    - as provided under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR)
- Co-administered by the Departments of Agriculture and Health
- A number of supporting legislation to assist with transition from *Quarantine Act* and regulations

# What does it do?

***biosecurity risk*** means

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

# What does it do?

- The Bill contains a range of biosecurity measures to manage the public health risk posed by serious communicable diseases
- Reflecting the new ways in which human health risks are managed, it includes a range of **measures that can be tailored** to accommodate an individual's circumstances and aims to ensure individual liberties and freedoms are considered, as well as the risk posed by the disease
- allows for measures such as:
  - passenger entry and exit screening,
  - the management of exotic diseases onshore and
  - the review of human biosecurity decisions,
  - whilst ensuring that the use of powers and exercise of functions under the Bill are balanced against an individual's rights.

# What does it do?

- Manages biosecurity risk on a risk management approach
  - powers to identify, assess and manage biosecurity risks in relation to goods, conveyances and onshore pest or disease incursions
- Powers exercised by appointed biosecurity officials who have the appropriate training and knowledge to recognise biosecurity risks and manage them appropriately—supported by extensive technical, policy and scientific expertise
- Intended to replace the *Quarantine Act 1908*
  - New bill will better manage biosecurity risks in current and future trading environments
  - Easier to find and understand powers
  - Removal of duplicate powers
  - Easier and cheaper for government and industry (\$7M less per year)

# Quarantine Act v Biosecurity Act

## Quarantine Act

- Industry Partnerships - these provisions currently overlap and can cause unnecessary administrative costs for businesses that are required to apply for and maintain multiple approvals and agreements with the Department of Agriculture.
- Currently impose numerous regulatory burdens:
  - Goods cannot be unloaded from a conveyance automatically upon arrival to Australia
  - Vessels and aircraft that arrive in Australia are required to arrive at a port or landing place that is declared to be a first point of entry.
  - The Act allows an aircraft/vessel to apply for permission to enter a port or landing place that is not a first point of entry.

## Biosecurity Act

- Industry Partnerships - this scheme will replace the duplicative quarantine approved premise and compliance agreement provisions in the Quarantine Act.
- Would remove unnecessary regulatory burdens:
  - Bill allows goods to be unloaded unless an officer instructs otherwise
  - The Bill takes this further – allows businesses to apply for standing permission to arrive in Australia multiple times over an identified period of time.
  - This will reduce administrative burdens present in the Quarantine Act.

Biosecurity Bill also introduces an 'Associate' test that can be used to determine if an applicant is an associate of a person the Department does not consider to be a fit and proper person.

# Some details

## Overview

- The Bill can be broadly divided into three areas;
  - **operational** chapters that support day to day biosecurity business
  - **stand-alone** chapters that support specialised biosecurity situations and
  - **general administrative** chapters that support the other necessary functions and powers

# Some details

## Operational

- **Chapter 3—Managing biosecurity risks: goods**
- powers to assess and manage biosecurity risks
  - prohibition on some goods being brought in or imported into Australia
  - **conditionally non-prohibited:** can only be brought in or imported if conditions met
- Director of Biosecurity conducts a Biosecurity Import Risk Analysis (similar to the current Import Risk Analysis process).
- **Chapter 4—Managing biosecurity risks: conveyances**
- regulates the movement of conveyances into Australian territory (includes vessels and aircraft) including powers to assess and manage biosecurity risks
  - International conveyances arriving in Australia from overseas and the goods on board must arrive at a declared first point of entry approved to accept them (unless given permission to do otherwise)
  - Ensures biosecurity risks enter Australia at a location where there are the appropriate facilities and personnel to manage them to an acceptable level

# Some details

## Operational

- ***Chapter 6—Managing biosecurity risks: monitoring, control and response***
- powers to manage biosecurity risks within Australia, including territorial waters
  - complements existing agreements and state controls, allowing for efficient and effective incursion responses in state, territory and Commonwealth jurisdictions
  - powers to assess and manage biosecurity risks (allows for management of invasive pests)
- **biosecurity control orders** can require biosecurity measures be carried out relating to a specific good, conveyance or premise
  - Over a larger area, monitoring zones can be declared that allow biosecurity officers to undertake monitoring and surveillance activities to check for potential biosecurity risks
  - If a pest or disease incursion is identified, a biosecurity response zone can be declared allowing biosecurity officers to carry out biosecurity measures and manage the biosecurity risk.

# Some details

## Operational

- *Chapter 6—Managing biosecurity risks: monitoring, control and response*
- **biosecurity activity zones** can be declared over areas where biosecurity functions or duties are performed on behalf of the Commonwealth
  - includes quarantines station or activities under an approved arrangement
  - activity zones allow biosecurity officers to exercise assessment and management powers in the zone and control where and how people, goods or conveyances enter or exit the zone, in order to manage the biosecurity risk

# Some details

## Specialised biosecurity management chapters

- **Chapter 2—Managing biosecurity risks: human health**
- powers to control the spread of communicable diseases that may cause serious harm to human health
  - only apply to listed human diseases, determined by the Director of Human Biosecurity
  - only when the circumstances are sufficiently serious to justify it, and only if it would be effective, is proportionate, and is no more restrictive or intrusive than is required to manage the risk.
- **Chapter 5—Ballast water and sediment**
- creates a single, Australia-wide ballast water and sediment management regime, providing a comprehensive system for ballast water management that covers international and domestic vessels
- **Chapter 7—Approved arrangements**
- allows the Commonwealth to partner with industry through an approved arrangement scheme
  - voluntary arrangements to manage the biosecurity risks associated with industry partners operations in the most efficient and effective way
  - industry participant must demonstrate its ability to meet strict standards to maintain the integrity of Australia's biosecurity system

# Some details

## Specialised biosecurity management chapters

- *Chapter 8 — Biosecurity emergencies and human biosecurity emergencies*
- provisions to manage a pest or disease that poses a **nationally significant threat** to human, plant and animal health, the environment or the economy.
  - The focus of these powers is to enable a fast and effective response that helps manage the amount of damage to Australia's communities, local industries and economy.
- The **emergency chapter** complements existing agreements and state and territory controls, allowing for efficient and effective emergency responses in state, territory and Commonwealth jurisdictions

# Some details

## General administration chapters

- ***Chapter 1—Preliminary***
- deals with administrative matters such as jurisdiction, definitions of key terms and the objects
- ***Chapter 9—Compliance and enforcement***
- introduces a number of new tools to manage compliance and enforcement, designed to encourage “clients” to voluntarily comply with biosecurity requirements
  - infringement notices, civil penalties, enforceable undertakings and criminal sanctions
  - additional warrants powers that allow officers to enter premises in order to manage biosecurity risk

# Some details

## General administration chapters

- **Chapter 10—Governance and officials**
- Director of Biosecurity (the Secretary of the Agriculture Department), the Director of Human Biosecurity (the Commonwealth Chief Medical Officer), biosecurity officers, biosecurity enforcement officers and human biosecurity officers
  - assigns generic powers and functions for each position
  - powers to gather information for a review of the biosecurity system delegated to the Inspector-General of Biosecurity
  - help ensure that the biosecurity system is robust and that the assessment and management of biosecurity risk is subject to regular review and continual improvement
- **Chapter 11—Miscellaneous**
  - includes cost recovery, exemptions and modifications, immunity, information sharing and reviewable decisions.
  - provisions relating to the application of the *Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters* and the management of biosecurity risks in the external territories.

# Some details

## Offences and penalties

### ▪ ***Strict liability offences***

- defence of honest and reasonable mistake of fact is available to the defendant (see section 9.2 of the *Criminal Code*)
- All departures from the *Australian Government Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide) have been approved by the Attorney-General

### ▪ ***Reversing the evidential burden***

- Said to be justified in circumstances where the facts in question are peculiarly within the knowledge of the defendant and it would be difficult or expensive for the prosecution to provide evidence, but the evidence is readily and cheaply available for the defendant

# Some details

## Offences and penalties

- **Abrogation of the privilege against self-incrimination**
- The privilege against self-incrimination is an important common law and international law principle that provides an individual with the right not to answer questions or produce materials which may incriminate them of a criminal offence or expose them to a civil penalty.
- However, this privilege may be overridden in circumstances where its use can seriously undermine the effectiveness of a regulatory scheme and prevent the collection of evidence.
- Chapters 3, 4 and 6 of the Bill contain powers that allow biosecurity officers to ask questions and require documents that abrogate the privilege against self-incrimination.
  - Removing the privilege in these circumstances is said to be justified, because this information is required to accurately assess biosecurity risks and ensure that they are managed to an acceptable level.
  - Example – Foot and Mouth Disease

# Some details

## Offences and penalties

- **Abrogation of the privilege against self-incrimination**
- has been limited so that self-incriminatory disclosures cannot be used against the person making the disclosure in any proceedings (use and derivative use immunity)
- only exceptions to this are in relation to proceedings arising out of *Criminal Code* sections 137.1 and 137.2 (false and misleading information and documents), and
- proceedings for the contravention of clause 532 or 533 (civil penalties for false or misleading information or documents)

What's next?

# Process

- House of Representatives
  - 27 Nov 2014      Introduced and read a first time
  - 27 Nov 2014      Second reading moved
  - 09 Feb 2015      Second reading debate
  - 09 Feb 2015      Second reading agreed to
  - 09 Feb 2015      Third reading agreed to
- Senate
  - 10 Feb 2015      Introduced and read a first time
  - 10 Feb 2015      Second reading moved
  - **18 Mar 2015**      **Second reading debate**

# Issues

- Trans-Pacific Partnership (TPP) and interactions
  - Note provisions in other trade related treaties
  - Dispute resolution procedures and processes
  - Rights to private companies and individuals to enter dispute procedures with States

# Examples & Discussion

# Examples

- Recent Hepatitis A positive berries
- <http://www.abc.net.au/news/2015-02-27/hepatitis-a-case-frozen-berries-sa-health/6267978>



# Examples

- Fireants
- Release of *Cydia succedana* for the biological control of gorse (*ulex europaeus*)
- Apples from the USA
- Beef and beef product imports (into Australia) for human consumption
- Cooked turkey meat from USA
- Ornamental fish
- Ebola

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