THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

INSPECTOR-GENERAL OF BIOSECURITY BILL 2012

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry, Senator the Honourable Joseph Ludwig)
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INSPECTOR-GENERAL OF BIOSECURITY BILL 2012

Purpose of the Bill
The Inspector-General of Biosecurity Bill 2012 (the Bill) establishes the Inspector-General of Biosecurity (Inspector-General) as a statutory body to review the performance of functions and exercise of powers by the Director of Biosecurity (and biosecurity officers and biosecurity enforcement officers), including a review of the process for conducting Biosecurity Import Risk Analyses (BIRAs).

The Inspector-General will contribute to Australia’s biosecurity system by providing independent review of the performance of functions and exercise of powers by the Director of Biosecurity. Decisions and systems will be regularly reviewed resulting in overall system improvements and provide an assurance framework for stakeholders of the system. This will ensure that Australia’s biosecurity system maintains its integrity and continues to improve into the future.

The role of the Inspector-General does not however extend to reviewing or auditing the functions or processes of the Director of Human Biosecurity.

Effect of the principle provisions

Review of functions and powers under the Biosecurity Bill
The Bill provides the Inspector-General with the powers to undertake an independent review (including conducting audits, assessments and evaluations) of the performance of functions and the exercise of powers by the Director of Biosecurity, biosecurity officers and biosecurity enforcement officers under the Biosecurity Bill 2012 (the Biosecurity Bill). The Inspector-General is required to report directly to the Agriculture Minister on findings of a review and any recommendations resulting from that review.

The Inspector-General is required to develop a review program in consultation with the Agriculture Minister and the Director of Biosecurity. To maintain the independence of the Inspector-General, the Inspector-General is not subject to the direction of the Director of Biosecurity in relation to a review.

The Inspector-General is also able to review processes for conducting BIRAs generally, or specifically in relation to a particular BIRA. This review function replaces the current administrative review process undertaken by the Import Risk Analysis Appeals Panel (IRAAP). The Inspector-General will not consider the merits or scientific basis of a BIRA decision or make recommendations in respect of the findings of a BIRA. The Inspector-General’s role is to consider the process that was used to conduct the BIRA and make any findings publicly available.

To ensure transparency, the provisions of this Bill require reports on reviews to be made publicly available. Findings on the BIRA review process will be published on a website maintained by the Department of Agriculture, Fisheries and Forestry.

Information gathering powers
The Bill provides for the Inspector-General to compel a person to provide information or documents or answer questions if the Inspector-General has reason to believe that the person has information relevant to a review. Information or documents that are relevant to a review
may be known or held by people other than the Director of Biosecurity or the Agriculture Department. For example, an importer may have information relating to the grant of a permit by the Director of Biosecurity. The ability to require information or documents is crucial to the Inspector-General’s ability to review the performance of functions and the exercise of powers by the Director of Biosecurity.

A person is not excused from providing information or documents to the Inspector-General on the basis that it may incriminate the person. Abrogating the privilege against self-incrimination will allow the Inspector-General to access information vital to exposing any potential weaknesses in the biosecurity system, helping to ensure the most effective management of biosecurity risks continues into the future. Collection of information or documents relevant to a review may incidentally include the collection of personal information; however the focus of a review by the Inspector-General is on processes within the biosecurity system, not reviewing the individual.

The Bill allows the Inspector-General to enter premises that are subject to requirements under the Biosecurity Bill—such as places where approved biosecurity functions take place—and to exercise information-gathering powers in those premises. Premises that are not subject to requirements of the Biosecurity Bill, such as residential premises, may also be entered under warrant or consent. This allows the Inspector-General to effectively discharge his or her functions as information or documents relevant to a review may be found on these premises. Entry to premises that relate to an approved arrangement is implied by the voluntary nature of the arrangement and in the case of other premises consent is implied by the very nature of being part of the regulatory scheme. The Inspector-General is required to have regard to minimal disruption of the occupier and to give the occupier and the Director of Biosecurity reasonable notice of entry. To safeguard against improper use of powers, only the Inspector-General and staff of the Inspector-General (where delegated) are able to use the information-gathering powers on premises. The Inspector-General can also be assisted by persons where the assistance is necessary and reasonable.

Due to the nature of the powers contained in the Bill, delegation of powers provided by clause 10 (compelling persons to provide information), clause 20 (entry to premises), clause 34 (review warrants) and clause 35 (adjacent premises warrants) will be limited to Senior Executive Service (SES) level employees.

**Offence and penalty provisions**

The Bill provides for offence and penalty provisions to encourage compliance with the Bill. The penalty amounts are consistent with the Australian Government *The Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, 2011* (the Guide to Framing Commonwealth Offences) developed by the Attorney-General’s Department.
Public Consultation
A comprehensive consultation process has been conducted in conjunction with the consultation process for the Biosecurity Bill to inform the development of the Bill and all interested parties were encouraged to provide input. The consultation process also aimed to raise understanding of the intended outcomes of the Bill and provide an opportunity to work with interested parties to identify and resolve potential issues.

During the development of the Bill, consultation occurred with state and territory governments and the Industry Legislation Working Group. The Working Group was established in 2009 and comprised representatives from the cargo, shipping, ports, supply chain and logistics, airline, airport, customs, environment, animal, plant, invasive species, primary producers and petroleum/exploration sectors.

A number of communication channels were utilised to ensure key information effectively reached interested parties. This included the development of dedicated interactive website which featured the exposure draft of the legislation, all supporting explanatory material, a blog, information on the consultation process and information on how stakeholders could have their say. Key consultation and communications activities have also included state and territory government, industry and public meetings, an embassy briefing and a process for interested parties to submit comments on the exposure draft of the Bill.

All input and comments were considered during the drafting of the legislation and the finalisation of the text of the Bill and resulted in further consideration of key aspects.

Outline of the Inspector-General of Biosecurity Bill 2012

Part 1—Preliminary
Part 1 of the Bill contains the machinery provisions of the Bill including the short title, commencement, definitions used in the Bill and extension of the application of the Bill to the external territories of Christmas Island and the Cocos (Keeling) Islands. Clauses 1 and 2 of Part 1 will commence on the day that the Bill receives Royal Assent and clauses 3 to 67 will commence at the same time as clause 3 of the Biosecurity Bill commences. The functions of the Inspector-General are linked to review of functions and powers contained in the Biosecurity Bill so review of such functions and powers by the Inspector-General cannot occur before the provisions in the Biosecurity Bill commence.

Part 2—Inspector-General of Biosecurity
Part 2 of the Bill establishes the office of the Inspector-General of Biosecurity and sets out the functions of the Inspector-General. The functions of the Inspector-General are to:
- review the performance of functions and exercise of powers by the Director of Biosecurity, biosecurity officers and biosecurity enforcement officers (including conducting audits, evaluations and assessments),
- to review the process of conducting BIRAs generally
- to review the process of conducting a particular BIRA (including under Part 5),
- to report on those reviews in accordance with the Act
- any other functions conferred by the Act, the regulations or any other law of the Commonwealth, and
- to do anything incidental or conducive to the performance of the above functions.
Part 2 also provides that the Inspector-General must set a review program each year, and allows the Agriculture Minister to direct the Inspector-General to conduct a review.

**Part 3—Powers for conducting reviews: general**

Part 3 of the Bill sets out the information gathering and entry powers of the Inspector-General. Under Division 2 the Inspector-General can invite submissions and also give notices requiring documents and information to be provided that is relevant to a review. Under Division 3, a person who does not comply with a notice from the Inspector-General to provide documents or information is liable for a civil penalty. In addition, the privilege against self-incrimination does not apply. There is no loss of legal professional privilege in relation to information or documents provided and there is immunity from civil proceedings for persons who have complied with a notice to provide documents or information to the Inspector-General.

Division 4 allows the Inspector-General to enter the following premises and exercise the powers contained in clauses 21 and 22:

- (a) premises at which are owned or controlled by the Commonwealth where functions are or have been performed, or powers are or have been exercised, under the Biosecurity Bill by the Director of Biosecurity or by biosecurity officers or biosecurity enforcement officers
- (b) premises at which a biosecurity industry participant carries out biosecurity activities under an approved arrangement pursuant to Chapter 7 of the Biosecurity Bill, or
- (c) any other premises where functions are or have been performed, or powers are or have been exercised, under the Biosecurity Bill by the Director of Biosecurity or by biosecurity officers or biosecurity enforcement officers.

The entry powers set out in Division 4 are restricted to premises where it is necessary for the performance of the Inspector-General’s functions. Entry to premises listed at (a) and (b) above can occur without consent or warrant and parties affected by these entry powers will be aware of this given that the premises are limited to those which are already subject to requirements under the Biosecurity Bill. Consent to entry is also implied where the activities are undertaken under an approved arrangement, as the parties enter into the arrangement voluntarily. However, the Inspector-General is not authorised to enter premises listed at (c) above unless the occupier has consented to the entry or the entry is authorised by a review warrant.

The exercise of powers in Division 4 is limited to the Inspector-General and persons assisting the Inspector-General. Persons who may assist the Inspector-General include staff of the Inspector-General, consultants engaged under clause 59 and persons who have relevant technical expertise.

**Part 4—Reports on reviews**

Part 4 of the Bill implements the government’s policy by creating an independent statutory body to report on the functions of the Director of Biosecurity. This was a recommendation of the 2008 independent review of Australia’s quarantine and biosecurity arrangements—*One biosecurity: a working partnership* (the Beale review) which was accepted by the government.
The Part sets out the requirements for the Inspector-General to report on reviews undertaken and also ensures that there are protections in relation to the inclusion of specific information in a report on a review. In particular, these protections relate to the identification of individuals in a report and the application of natural justice principles where the Inspector-General proposes to include criticism of an individual in a report. Reports prepared by the Inspector-General and presented to the Agriculture Minister are to be tabled in Parliament or otherwise made publically available.

Part 5—Requests for review of BIRA process
Part 5 of the Bill provides for the Inspector-General to review the processes for BIRAs. This is an important function as BIRAs will be used to assess risk in relation to the bringing in or importation of goods into Australia, and measures that may be required to manage associated biosecurity risks.

Under this Part, the Inspector-General has the power to review the process undertaken to conduct a BIRA where a request is made by a person affected by the BIRA process. This review function of the Inspector-General, replaces the current Import Risk Analysis Appeals Panel (IRAAP) process. Review by the Inspector-General only extends to review of the process followed in conducting the BIRA and does not extend to review of the validity of the scientific or policy decisions made by the Director of Biosecurity in relation to the BIRA. There is no external merits review of the BIRA process by the Inspector-General as the role is to make recommendations for improvements to the process and not to review the decisions made in respect of a BIRA.

Part 6—Administrative provisions
Part 6 of the Bill sets out the working arrangements for the Inspector-General and staff. The clauses in Part 6 include provisions relating to the appointment, remuneration and leave of the Inspector-General, resignation by the Inspector-General, termination of the appointment of the Inspector-General, as well as the management and disclosure of interests held by the Inspector-General.

Part 7—Miscellaneous
Part 7 of the Bill deals with a number of miscellaneous matters that are essential to the accountability, integrity, good administration and transparency of the statutory office of the Inspector-General. The clauses in Part 7 provide for:

- the Inspector-General to have regard to minimising disruption during a review
- allowing the Agriculture Minister to provide a certificate to limit the publication of information that would be prejudicial to the public interest
- preparation of an annual report by the Inspector-General
- delegation of powers by the Inspector-General
- secrecy provisions to protect information
- application of the Biosecurity Act 2012
- protection from civil proceedings in relation to specific things done, or omitted to be done, in good faith, and
- a power for the Governor-General to make regulations.
**The Bill’s operation**

**Date of effect and application**
Clauses 1 and 2 of the Bill will commence on Royal Assent and clauses 3 to 67 will commence at the same time as clause 3 of the Biosecurity Bill. It is intended that clause 3 of the Biosecurity Bill will commence 12 months after the date the Biosecurity Bill receives Royal Assent. Delayed commencement of this Bill will allow sufficient time for the appointment of the Inspector-General, staffing of the Office of the Inspector-General of Biosecurity, activities related to the transition of the Interim Inspector-General of Biosecurity to the Inspector-General, as well as allow for implementation and training activities to occur. Additionally, the functions of the Inspector-General are linked to functions and processes contained in the Biosecurity Bill so review of such functions and processes by the Inspector-General cannot occur before the provisions of the Biosecurity Bill commence.

**Financial impact**
No significant direct or indirect financial impact on the Commonwealth will arise from the introduction of this Bill, apart from the remuneration of the Inspector-General (which is to be determined by the Remuneration Tribunal). The Office of the Inspector-General of Biosecurity will be staffed by APS staff from the Department of Agriculture, Fisheries and Forestry.
Regulation impact statement

The Inspector-General of Biosecurity Bill is considered in the Regulation Impact Statement provided under the Biosecurity Bill. The Regulation Impact Statement, entitled Regulation Impact Statement Biosecurity Legislation is provided at Attachment A to this explanatory memoranda.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Inspector-General of Biosecurity Bill 2012

Overview of the Bill

The purpose of the Bill is to establish the Inspector-General of Biosecurity as an independent statutory office to review the functions and processes of the Director of Biosecurity under the Biosecurity Bill and related legislation. The Bill strengthens the accountability of the Director of Biosecurity and ensures external review of the functions and processes of the Director of Biosecurity.

The Bill provides the Inspector-General with the powers to undertake independent audits, assessments and evaluations of the functions and processes of the Director of Biosecurity, biosecurity officers and biosecurity enforcement officers, with particular regard to their effectiveness in managing biosecurity risk.

The Bill engages the following human rights:

- Article 17 of the International Covenant on Civil and Political Rights (1980) (ICCPR) – the right to freedom from interference with privacy
- Article 14(3) of the ICCPR – the right to be free from self-incrimination
- Article 19(2) and (3) of the ICCPR – the right to freedom of opinion and expression

Human rights implications

The right to freedom from interference with privacy

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence, and protects a person’s honour and reputation from unlawful attacks. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to this purpose.

Clauses 10 (persons required to provide information) and 16 (civil penalty for failure to comply with requirements of clause 10) of the Bill provide for the Inspector-General to require persons to provide information relevant to a review and provides for a civil penalty for persons not complying with the request. The purpose of these powers is to allow the Inspector-General to gain access to information that might be relevant to a review of biosecurity activities undertaken by the department. Information relevant to a review under this clause may incidentally require the collection of personal information, engaging with Article 17 of the ICCPR.
Clauses 10 and 16 are necessary to achieve the legitimate aim of conducting an external review to ensure the accountability of the Director of Biosecurity, as the power to request information is crucial to the Inspector-General’s ability to review biosecurity processes. These clauses are reasonable and proportionate to this legitimate aim as the Bill contains a number of protections. For example, a person may request the information not be made public (clauses 10(6) and (7)), thereby limiting the use of the information. Clause 38 specifies that certain material must be excluded from reports, and it is an offence to disclose information collected under the Act (clause 64). Further, the civil penalty contained within clause 16, for non-compliance with clause 10, is only 30 penalty units and is in accordance with the Guide to Framing Commonwealth Offences.

The purpose of collecting information that may be personal information is incidental to the Inspector-General’s primary focus of reviewing biosecurity processes and functions. This purpose, along with the safeguards listed above, ensures that clauses 10 and 16 operate in a way that reasonable, proportionate and necessary to allow the Inspector-General access to all relevant information necessary to review biosecurity processes and ensure the accountability of the Director of Biosecurity.

Clauses 20, 21, 22, 23, and 24 of the Bill provide for the power to enter premises, and for powers to be exercised on those premises (such as to search the premises, or to inspect, take extracts or copies of documents, operate electronic equipment and sample anything on the premises). These powers engage Article 17 of the ICCPR where the personal information, correspondence or property of the Director of Biosecurity, officer or employee of a Commonwealth, or state or territory body, biosecurity industry participant or another party at the premises subject to a search may be collected, searched, copied or seized.

The powers in clause 21, 22 and 23 are necessary to achieve the legitimate purpose of assisting the Inspector-General in accessing sufficient information to complete a review of biosecurity activities, to ensure the accountability of biosecurity processes and functions. Access to information held by a person on the premises may provide evidence to evaluate the effectiveness of biosecurity activities undertaken by the department. Access to this information allows the Inspector-General to recommend improvements in the report to the Agriculture Minister, ensuring that the processes and functions of the department remain effective in managing biosecurity risk.

The powers in these clauses are reasonable and proportionate as they may only be exercised in limited circumstances. For instance, the powers included in clause 21, 22, and 23 may only be exercised if the Inspector-General believes there is information on the premises may be relevant to a review. The powers of entry are both reasonable and proportionate as the Bill only allows the Inspector-General of Biosecurity to conduct searches without a warrant or consent on relevant biosecurity premises (and not, for example, residential premises) for the purpose of reviewing whether biosecurity functions and activities are being carried out appropriately and effectively. ‘Relevant biosecurity premises’ is intended to include premises owned or operated by the Agriculture Department or other premises which are already subject to requirements under the Biosecurity Bill. This may include entry to premises under an approved arrangement, where consent is implied by the voluntary nature of the arrangement (and will be a condition of the approved arrangement).
Entry to other premises such as private residences must be under a warrant or by consent of the occupier (see clauses 20 and 24. Obligations on the Inspector-General include the requirement that consent of the occupier is only to be given voluntarily; and where entry is with a warrant, announcement must be made before entry and details of the warrant given to the occupier. Accessing adjacent premises with consent or under a warrant may occur if the Inspector-General needs to review powers exercised or functions performed under the Biosecurity Bill in a premises that can only be accessed via the adjacent premises (see clause 24), such as a private driveway adjacent to a warehouse where biosecurity activities take place.

The Bill provides that the Inspector-General is not authorised to enter premises unless the occupier of the premises has consented to the entry and the Inspector-General has identified himself or herself, or entry is made under an adjacent premises warrant. If entry is made with consent of the occupier and where that consent is revoked, the Inspector-General and any persons assisting must leave the premises (clause 26). In accessing adjacent premises under clause 24, the Inspector-General and all persons assisting are required to take all reasonable steps to cause as little inconvenience as possible. The ability for the occupier to revoke consent and have the Inspector-General and persons assisting leave the premises ensures the occupier’s right to privacy is adequately protected.

Additional protections in these clauses include: that the Inspector-General can only be assisted by a member of staff, a consultant engaged under clause 59 or a person who has the requisite technical expertise if that assistance is necessary and reasonable (clause 25); the ability to enter premises and exercise powers under clauses 20, 21, 22, 23, and 24 are only exercisable by the Inspector-General or, where delegated, to staff of the office of the Inspector-General; and the requirement on the Inspector-General to have regard to minimising disruption during review (clause 60).

Clause 14 provides for the Inspector-General to retain or make copies of documents produced under clause 10, while clause 45 provides for the Inspector-General to retain or make copies of documents produced under clause 44. Information relevant to a review under these clauses may incidentally require the collection of personal information, engaging Article 17 of the ICCPR. The power is necessary to achieve the legitimate purpose of conducting an external review to ensure the accountability of the Director of Biosecurity for the reasons outlined above in relation to clause 10 and clause 45. The power is reasonable and proportionate to this purpose as clause 14 is subject to the same protections as clause 10, therefore restricting the release of information obtained. The power is reasonable and proportionate under clause 45, as the information is being requested from the Director of Biosecurity only, rather than potential members of the general public. Additionally, the power under clause 14 is limited to the purpose of retaining and copying information relevant to review of biosecurity process, posing low potential for harm to the individual when balanced against the public interest.

Accordingly, the powers contained within clauses 10, 16, 20, 21, 22, 23, and 24 are reasonable, necessary and proportionate to the legitimate purpose of allowing the Inspector-General to obtain all information relevant to the review of biosecurity activities undertaken by the department.
The right to be free from self-incrimination

Article 14(3)(g) of the ICCPR protects the right to be free from self-incrimination in the determination of a criminal charge by providing that a person may not be compelled to testify against him or herself or confess guilt. The common law also recognises the privilege against self-incrimination which applies unless expressly or impliedly overridden by statute. The privilege against self-incrimination may be subject to permissible limits. Any limitations must be for a legitimate objective, and be reasonable, necessary and proportionate to that objective.

The Bill limits Article 14(3)(g) of the ICCPR by expressly removing the privilege against self-incrimination in relation to clause 10 of the Bill which requires persons to provide information if the Inspector-General has reason to believe it is relevant to a review.

Upholding the privilege against self-incrimination in relation to individuals who have information or documents that are relevant to the scope of a review that could potentially lead to recommendations for improvement, could have significant consequences. Such consequences could include increased vulnerability to biosecurity risks to agriculture, fisheries, or forestry productivity or increased costs associated with controlling pests and diseases. Gaining access to information or documents about vulnerability in Australia’s biosecurity system assists in protecting Australia’s strong biosecurity framework and the reputation of Australia as a trading nation. Abrogating the privilege against self-incrimination will allow the Inspector-General to access information vital to exposing any potential weaknesses in the biosecurity system, helping to ensure the most effective management of biosecurity risks continues into the future.

Whilst in some cases it may be feasible to obtain information by other means (for example, warrants), the additional time taken to obtain such information may reduce the ability of the Inspector-General to make timely recommendations to the Director of Biosecurity, significantly increasing the risk of a disease or pest entering, establishing or spreading to Australia, or within Australian territory. Without these limitations, the Inspector-General’s ability to advise on improvements to processes that manage biosecurity risks through a responsive, evidence-led approach will be significantly reduced. Removal of the privilege ensures that the Inspector-General will be able to gather information from persons with specific knowledge that would aid a review into biosecurity processes, which need to occur as urgently as possible (for example, when reviewing biosecurity emergency procedures). In some cases one person may have specific knowledge relevant to a review—further justifying the importance of abrogating the privilege.

The abrogation of privilege against self-incrimination as contained within clause 17 is both reasonable and proportionate due to the protections contained in clause 17 and elsewhere in the Bill. Protections include that: a person may request that the information not be made public (clauses 10(6) and (7)); certain material must be excluded from reports (clause 38); it is an offence to disclose information collected under the Act (clause 64). As a result of these safeguards there is low harm to the individual when balanced against the public interest of protecting Australia’s strong biosecurity framework.

The only exceptions to the use and derivative use immunity in clause 17 are in relation to proceedings under or arising out of sections 137.1, 137.2 (false and misleading information and documents) or 149.1 (obstruction of Commonwealth public officials) of the Criminal
Code and proceedings for the contravention of subclauses 16(1), (2) or (4) of this Bill (civil penalties for failure to comply with a notice).

Accordingly, the abrogation of the privilege against self-incrimination under proposed clause 17 is reasonable, necessary and proportionate to allow the Inspector-General to obtain all information relevant to the review of biosecurity activities undertaken by the department.

The right to freedom of opinion and expression

Article 19(2) of the ICCPR protects the right to freedom of expression, including the written expression of an opinion. Article 19(3) provides that it is permissible to limit the application of Article 19(2) on the grounds of national security, public order or public health. The limitation must be prescribed in legislation, necessary to achieve the purpose of the provision and proportionate.

Clause 61 of the Bill may particularly engage Article 19, as it could: prevent the publication of part or whole of a submission made to the Inspector-General as part of a review under clause 11 of the Bill; and prevent the publication of certain information in a report of the Inspector-General under clause 37 of the Bill. Clause 61 empowers the Agriculture Minister to issue the Inspector-General with a certificate stating that the disclosure of certain information, in a submission, relating to a certain matter would be prejudicial to the public interest. Clause 61 is reasonable and proportionate as the grounds in which information can be stopped from being disclosed include matters of national security, international relations, state and territory relations, the personal security of a person or interference with the judicial process.

Accordingly, the ability to prevent disclosure of certain information under proposed clause 61 is reasonable, necessary and proportionate as it may only be exercised on the basis of national security or public order. For this reason the public interest decisively outweighs the harm to the individual.

Conclusion

The Bill is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.
Notes on Clauses

Part 1—Preliminary

Clause 1  Short title
This clause provides that the Bill, when enacted, may be cited as the Inspector-General of Biosecurity Act 2012.

Clause 2  Commencement
Clause 2 provides for the commencement of the Bill. The effect of items within the table is to enable different parts of the Bill to commence at different times.

Item 1 of the table provides that clauses 1 and 2 of the Bill commence on the day the Bill receives Royal Assent. This gives effect to the Bill’s title and commencement provisions, and ensures that the title and commencement provisions align with the commencement of similar provisions of the Biosecurity Bill.

Item 2 of the table provides that clauses 3 to 67 commence at the same time as clause 3 of the Biosecurity Bill commences. The commencement of clauses 3 to 67 will give effect to the operation of the office of the Inspector-General of Biosecurity, including provisions relating to functions of the Inspector-General and powers for conducting reviews. The commencement of these clauses are linked to the commencement of the operational clauses of the Biosecurity Bill so review of such functions and processes by the Inspector-General cannot occur before the provisions of the Biosecurity Bill commence.

Clause 3  Definitions
This clause provides definitions for the Bill. Notes are provided below on each definition.

*adjacent premises warrant*
This definition provides that ‘adjacent premises warrant’ means a warrant that is issued under clause 35 of this Bill.

*Agriculture Minister*
This definition provides that ‘Agriculture Minister’ means the Minister administering the Primary Industries Levies and Charges Collection Act 1991

*approved arrangement*
This definition provides that ‘approved arrangement’ has the same meaning as in the Biosecurity Act 2012 (the Biosecurity Act). Currently, clause 10 of the Biosecurity Bill provides that an approved arrangement is an arrangement for which an approval is in force under paragraph 404(1)(a) of the Biosecurity Bill (including a varied arrangement for which an approval is in force under that paragraph as it applies because of subclause 410(3) of the Biosecurity Bill). See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

*Australian territory*
This definition provides that ‘Australian territory’ has the same meaning as in the Biosecurity Act. Currently, clause 11 of the Biosecurity Bill provides that a reference in a provision of the Biosecurity Bill to ‘Australian territory’ is defined to mean a reference to Australia,
Christmas Island, the Cocos (Keeling) Islands (and any external Territory to which that provision extends), and the airspace over these areas. It also refers to the coastal sea of Australia, of Christmas Island, of the Cocos (Keeling) Islands (and of any other external Territory to which that provision extends).

**biosecurity enforcement officer**
This definition provides that ‘biosecurity enforcement officer’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that a biosecurity enforcement officer refers to a person authorised by the Director of Biosecurity under clause 584 or 586 of the Biosecurity Bill to be a biosecurity enforcement officer. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**biosecurity industry participant**
This definition provides that ‘biosecurity industry participant’ has the same meaning as in the Biosecurity Act. Currently, clause 13 of the Biosecurity Bill provides that the term ‘biosecurity industry participant’ means a person who is the holder of an approved arrangement. It also explains that the biosecurity industry participant is considered to be ‘covered by’ the approved arrangement. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**biosecurity officer**
This definition provides that ‘biosecurity officer’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that a biosecurity officer refers to a person authorised by the Director of Biosecurity under clause 583 of the Biosecurity Bill to be a biosecurity officer. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**biosecurity risk**
This definition provides that ‘biosecurity risk’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that biosecurity risk (except as provided for in clause 309 of the Biosecurity Bill) means:

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

See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**BIRA** (short for Biosecurity Import Risk Analysis)
This definition provides that ‘BIRA’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that a BIRA has the meaning given by clause 163 of the Biosecurity Bill. A BIRA is an evaluation by the Director of Biosecurity of the level of biosecurity risk associated with particular goods, or a particular class of goods, that may be imported, or are proposed to be imported, into Australian territory, including, if necessary, the identification of conditions that must be met to manage the level of biosecurity risk associated with the goods, or the class of goods, to a level that achieves the Appropriate
Level of Protection (ALOP) for Australia. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term and further explanation of the ALOP.

**chief human biosecurity officer**
This definition provides that ‘chief human biosecurity officer’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that a chief human biosecurity officer for a state or territory means a person authorised by the Director of Human Biosecurity under clause 600 of the Biosecurity Bill to be a chief human biosecurity officer for the state or territory. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**civil penalty provision**
This definition provides that a subsection, or a section that is not divided into subsections, that has set out at its foot the words ‘civil penalty’ and one or more amounts in penalty units, is a civil penalty provision. Civil penalties can be applied to a variety of contraventions of the Act, and have been included in addition to criminal offences.

**Commonwealth body**
This definition provides that ‘Commonwealth body’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that a Commonwealth body includes a Department of State, or an authority, of the Commonwealth. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**conveyance**
This definition provides that ‘conveyance’ has the same meaning as in the Biosecurity Act. Currently, clause 15 of the Biosecurity Bill provides that the term conveyance refers to any vessel, aircraft, vehicle, train (including railway rolling stock) or means of transport prescribed in the regulations for the purpose of this definition. Except in Chapter 5, and Part 3 of Chapter 13 in the Biosecurity Bill, a conveyance that is being carried on board another conveyance (for example a lifeboat) is considered a good and will be managed under the provisions in Chapter 3 of the Biosecurity bill. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**damage, in relation to data**
This definition provides that damage, in relation to data, includes damage by erasure of data or addition of other data. Clause 31 of the Bill provides that compensation may be provided for damage to electronic equipment, including damage to data recorded on the equipment.

**data**
This definition provides that data includes information in any form and any program (or part of a program). This term is also used in clause 31 of the Bill, in that compensation may be payable where the Inspector-General, or a person assisting the Inspector-General, operates equipment pursuant to clause 22 and data recorded on the equipment is damaged.

**Director of Biosecurity**
This definition provides that ‘Director of Biosecurity’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that this term means the Director of Biosecurity referred to in clause 578 of the Biosecurity Bill. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.
**Director of Human Biosecurity**
This definition provides that ‘Director of Human Biosecurity’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that this term means the Director of Human Biosecurity referred to in subclause 582(1) of the Biosecurity Bill. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**evidential burden**
This definition provides that ‘evidential burden’ in relation to a matter means the burden, of adducing or pointing to evidence that suggests a reasonable possibility that a matter exists or does not exist. For example, under clause 64 of the Bill, a person who wishes to rely on the exception in subclause (2) bears the evidential burden in relation to adducing evidence that he or she was authorised to make a record of or disclose protected information or a protected document.

**Federal Circuit Court**
This definition provides that a reference to the ‘Federal Circuit Court’ is a reference to the Federal Circuit Court of Australia.

**Federal Court**
This definition provides that a reference to the ‘Federal Court’ is a reference to the Federal Court of Australia.

**Health Minister**
This definition provides that ‘Health Minister’ means the Minister administering the National Health Act 1953.

**human biosecurity officer**
This definition provides that ‘human biosecurity officer’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that human biosecurity officer refers to a person authorised by the Director of Human Biosecurity under clause 601 of the Biosecurity Bill to be a human biosecurity officer. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**import**
This definition provides that ‘import’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that import, in relation to goods, does not include unloading the goods for temporary purposes only (for example, to unload other goods). See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**Inspector-General**
This definition provides that ‘Inspector-General’ means the Inspector-General of Biosecurity referred to in clause 5 of the Bill. The Agriculture Minister must not appoint a person as the Inspector-General unless the Minister is satisfied that the person has suitable qualifications or experience in relevant scientific auditing or systems assessment disciplines. This is to ensure that the Inspector-General is appropriately qualified to review the performance of functions and exercise of powers by the Director of Biosecurity.
**issuing officer**
This definition provides that the term ‘issuing officer’ refers to a magistrate or a Judge of the Federal Court or Federal Circuit Court. It is intended that warrants provided for in clause 34 and clause 35 will be issued by an issuing officer to allow entry to premises under this Bill for the purposes of conducting reviews. See clause 36 for conferral of powers on an issuing officer.

**member of staff**
This definition provides that a ‘member of staff’ means a person referred to in clause 58 of the Bill. That is, the staff required to assist the Inspector-General are to be persons engaged under the Public Service Act 1999. A member of staff may include an APS employee employed by the Agriculture Department specifically attributed to the Office of the Inspector-General of Biosecurity, to ensure the Inspector-General receives the assistance and support required to effectively carry out his or her functions under the Bill.

**Part 5 review**
This definition provides that a ‘Part 5 review’ means a review under Part 5 of this Bill.

**person assisting**
This definition provides that a ‘person assisting’ the Inspector-General has the meaning given by clause 25 of the Bill. When the Inspector-General enters premises in accordance with clause 20 of the Bill, and exercises powers referred to in clauses 21 and 22 of the Bill, he or she may be assisted by a member of staff, a consultant engaged under clause 59 or a person who has the requisite technical expertise if that assistance is necessary and reasonable. See clause 25 for a more detailed explanation.

**premises**
This definition provides that a ‘premises’ includes the following:

- (a) a structure, building or conveyance
- (b) a place (whether or not enclosed or built on), including a place situated underground or under water
- (c) a part of a thing referred to in paragraph (a) or (b) above.

Division 4 of Part 3 of the Bill outlines the circumstances in which the Inspector-General may enter a premises and the powers that may be exercised in relation to the premises.

**relevant court**
This definition provides that ‘relevant court’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that ‘relevant court’ refers to the Federal Court of Australia, the Federal Circuit Court of Australia or a court of a State or Territory that has jurisdiction in relation to matters arising under the Biosecurity Bill.

**review**
This definition provides that ‘review’ means a review under this Act. See clause 6 which provides that the Inspector-General’s functions include the function for undertaking reviews.

**review powers**
This definition provides that ‘review powers’ has the meaning given by clauses 21 and 22 of this Bill.
**review warrant**
This definition provides that ‘review warrant’ means a warrant issued under clause 34 of this Bill.

**State or Territory body**
This definition provides that ‘State or Territory body’ has the same meaning as in the Biosecurity Act. Currently, clause 9 of the Biosecurity Bill provides that a state or territory body includes a Department of State, or an authority, of a state or territory. See the explanatory memorandum for the Biosecurity Bill for further explanation of this term.

**Clause 4 Extension of Act to Christmas Island, Cocos (Keeling) Islands and other prescribed external territories**
The clause provides that the Bill applies to the external territories of Christmas Island and the Cocos (Keeling) Islands. It also provides that the Act, or any provision of the Act may be extended to other external territories prescribed in the regulations. This means that in the future the Act, or any provisions of the Act, may be extended to additional external territories without requiring an amendment to the Act.

This is consistent with the operation of the Biosecurity Bill. In order to fully review the performance of functions and the exercise of powers of the Director of Biosecurity it is important that the jurisdiction of the Inspector-General is the same jurisdiction as the Director of Biosecurity.

**Part 2—Inspector-General of Biosecurity**

**Division 1—Establishment of the Inspector-General of Biosecurity**

**Clause 5 Inspector-General**
This clause states that there is to be an Inspector-General of Biosecurity. The Inspector-General is a statutory office holder independent to the Director of Biosecurity and the Agriculture Department. The Inspector-General is not subject to the direction of the Director of Biosecurity in relation to the review of a particular subject matter, the way in which a particular review is conducted or the priority given to a particular review (see clause 7 for further details).

**Clause 6 Functions**
Subclause (1) outlines the functions of the Inspector-General which are:

(a) to review the performance of functions and the exercise of powers by the Director of Biosecurity, biosecurity officers and biosecurity enforcement officers
(b) to review the process of conducting BIRAs generally
(c) to review the process of conducting a particular BIRA
(d) to report on those reviews in accordance with the Bill (see clauses 37 to 41 and 47 for further detail of the Inspector-General’s reporting requirements)
(e) any other functions on the Inspector-General by the Bill, the regulations or any other law of the Commonwealth, and
(f) to do anything incidental to or conducive to the performance of the above functions.

Subclause (2) clarifies that the Inspector-General’s review function outlined in paragraphs 6(1)(a) and 6(1)(b) (above) includes conducting audits, evaluations and assessments. The
review functions by the Inspector-General as outlined by this clause are not intended to extend to making comment on the validity of policy decisions, but rather to examine the effectiveness of systems in applying those policies.

Subclause (3) further clarifies that the Inspector-General’s review function does not extend to reviewing the operation of an approved arrangement covering a biosecurity industry participant. There are provisions in the Biosecurity Bill which allow for an audit to be conducted relating to a biosecurity industry participant and an approved arrangement (see for example, clause 434 of the Biosecurity Bill).

One of the above functions of the Inspector-General is to review the process for conducting a particular BIRA (Part 2 of Chapter 3 of the Biosecurity Bill outlines the process for the conduct of a BIRA by the Director of Biosecurity). Currently this review function is undertaken administratively by the Import Risk Analysis Appeals Panel (IRAAP) in relation to Import Risk Analysis (IRAs). Further detail in relation to review of the BIRA process is detailed in Part 5 of this Bill.

Division 2—Review program

Clause 7 Setting a review program
This clause requires that each year, the Inspector-General must set a review program in writing. This requirement ensures that the Inspector-General’s review program is transparent. The discretion to include a review in a review program is not absolute, as the Inspector-General must conduct a review if so directed by the Agriculture Minister (pursuant to clause 8 of the Bill). However, even when a Ministerial direction has been given, the Inspector-General will still have considerable discretion in scheduling reviews and allocating resources to competing priorities.

This clause also provides at subclause (3) that in setting the review program, the Inspector-General may exercise powers in Part 3 of the Bill as if references in that Part to a review or conducting a review were references to setting a review program. That is, in setting a review program, the Inspector-General may require a person to provide relevant information or documents (including requiring the information given to be in writing and verified on oath or affirmation or that answers be given on oath or affirmation), may invite submissions to be provided relevant to the review program, may enter premises and exercise powers and may retain and make copies of documents for such period as is necessary for the purposes of setting the review program. The use of the powers in Part 3 enable the Inspector-General to set the review program in an informed manner and apply a systemic risk-based approach to identify areas potentially requiring review.

In setting a review program the Inspector-General must consult the Agriculture Minister and the Director of Biosecurity at least once a year. Consultation with the Agriculture Minister ensures that the Inspector-General is accountable to the Minister in undertaking the review function. Consultation with the Director of Biosecurity allows both the Director and Inspector-General to be made aware of any practical issues that may arise in carrying out the proposed review program. The Inspector-General may also consult with any other person that he or she considers appropriate, to enable the Inspector-General to create a review program.

The discretion of Inspector-General to determine the review program is not subject to the direction of the Director of Biosecurity in relation to whether or not a particular subject or
matter is to be reviewed, the manner in which a particular review is to be conducted, or the priority to be given to any particular review. This protects the independence and integrity of the Inspector-General’s review program. The review program is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003.

Clause 8 When reviews are to be conducted
This clause provides that the Inspector-General must conduct reviews in accordance with the review program, to avoid improper use of power by the Inspector-General. The Agriculture Minister may direct the Inspector-General in writing to conduct a review (as referred to in paragraph 6(1)(a), (b) or (c), other than a Part 5 review) and if the Inspector-General receives a direction, the Inspector-General must include the review in the review program. This requirement is to ensure that the review program aligns with the objectives of the Minister.

However, Inspector-General is not subject to direction by the Agriculture Minister in relation to either of the following:
- the way in which a particular review is to be conducted, or
- the priority to be given to any particular review.

This is to ensure that the Inspector-General has discretion and independence in conducting the review program and conducting reviews under Part 5 of the Bill. Subclause (5) provides that a direction from the Agriculture Minister to the Inspector-General is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003.

Part 3—Powers for conducting reviews: general

Division 1—Application of this Part

Clause 9 Application of this Part
This clause provides that Division 1 of Part 3 does not apply in relation to a Part 5 review.

Division 2—Obtaining information and documents etc.

Clause 10 Inspector-General may require persons to provide information etc
This clause applies if the Inspector-General has reason to believe that a person has information or documents relevant to a review or that the person is capable of giving evidence that is relevant to a review.

Subject to subclause 61(3) (which relates to the giving of a certificate by the Agriculture Minister relating to disclosure of information that would be prejudicial to the public interest), the Inspector-General may, by written notice, require the person:
- to give the information to the Inspector-General by the time, and in the manner and form, specified in the notice
- to produce the documents, or certified copies of the documents, to the Inspector-General by the time, and in the manner, specified in the notice, or
- to attend before the Inspector-General, at the time and place specified in the notice, to answer questions relevant to the review.
The time specified in the notice must be a minimum of 14 days after the notice is given, to allow the person adequate time to give the information, produce the documents or copies of documents, or to attend before the Inspector-General to answer questions relevant to the review. Division 3 of this Part provides for the consequences of giving information, producing documents or answering questions, or the failure to do so and is discussed further at Division 3.

The Inspector-General has the power to require information to be provided in writing, or verified on oath or by affirmation, or that answers be given under oath or affirmation. For this purpose and for reasons of practicality, the oath or affirmation may be administered by the Inspector-General. The oath or affirmation is an oath or affirmation that the information or answers are or will be true.

Subclauses (6) and (7) allow for a person to, at the time of giving information or producing a document under this clause, request the Inspector-General not to make part or the whole of a document, or some or all of the information available under clause 12. The person may also request the Inspector-General not publish or make available part or the whole of the document or some or all of the information in a report under clauses 37 and 62, because the document or information is confidential. This is to ensure that the person’s right to maintain the confidentiality of information provided is protected and not interfered with unnecessarily (clause 12 allows the Inspector-General to make submissions publically available, clause 37 provides that the Inspector-General must make a report after completing a review and clause 62 specifies information that must be excluded from a report on a review).

Clause 11 Inspector-General may invite submissions
The Inspector-General may invite members of the public generally, or particular persons or organisations, to make submissions relevant to a review. This clause ensures that the Inspector-General is able to gather information relevant to a review from specific persons, or organisations outside the Agriculture Department. The scope of the provision is intentionally broad and can include the extension of an invitation to the Director of Biosecurity. Division 3 of this Part outlines the consequences of making a submission under clause 11 and provides protection from liability to civil proceedings for a person who in good faith makes a submission, as well as maintenance of legal professional privilege for information or a document included as part of a submission. These protections apply so that people are not discouraged from making a submission to a review.

Matters that are related to the process for inviting or making submissions, including the process for inviting submissions, are at the discretion of the Inspector-General. For example, the Inspector-General may choose to advertise in the press seeking written submissions, or the Inspector-General may contact particular people or organisations directly.

A person may, at the time of making a submission in response to an invitation under this clause, request the Inspector-General not to make part or the whole of the submission available (see clause 12), and request the Inspector-General not publish or make available part or the whole of the submission in a report under clause 37 or 62 because of the confidential information contained in the submission. If the Inspector-General refuses a person’s request in relation to a submission, in the case of a written submission—the person may require that all or part of the submission be returned to the person, and in the case of an oral submission—the person may withdraw all or part of the submission. The protections
above ensure that a person’s right to maintain the confidentiality of information provided is protected and not interfered with unnecessarily.

**Clause 12 Submissions may be made publicly available**

The Inspector-General has the discretion to make information or answers to questions given under clause 10, a document produced under clause 9, a written submission or a written record (which may be a summary) of an oral submission made in response to an invitation under subclause 11(1), available to the public generally or to particular persons or organisations. However the Inspector-General must not make information, an answer to a question, a document, a submission or a record of a submission, available to the extent that:

- it names or otherwise specifically identifies, an officer or employee of a Commonwealth (other than the Director of Biosecurity), or a state or territory body, or a consultant to the Agriculture Department, or
- it contains information relating to a matter specified in a certificate given by the Agriculture Minister under clause 61.

In addition, the Inspector-General must not make any of the following available under this clause:

(a) information given under clause 10 if the person who gave the information requested, under subclause 10(6), that the information not be published because the information is confidential, and the Inspector-General agreed to the request

(b) a document, or a part of a document, produced under clause 10 if the person who produced the document requested, under subclause 10(7) that it not be published because the information is confidential, and the Inspector-General agreed to the request

(c) a written record of an oral submission made in response to an invitation under subclause 11(1), unless the person who made the submission has verified the content of the record

(d) a submission made in response to an invitation given under subclause 11(1) if the person who made the submission has required its return or has withdrawn it under subclause 11(4), or

(e) a part of a submission made in response to an invitation given under subclause 11(1) if the person who made the submission has required that part to be returned or has withdrawn that part under subclause 11(4).

**Clause 13 Assistance from the Director of Biosecurity**

This clause provides that the Director of Biosecurity must comply with any reasonable request from the Inspector-General for assistance for the purposes of conducting a review. This is to ensure that the functions of the Inspector-General—which include reviewing the performance of functions and exercise of powers by the Director of Biosecurity—are able to be exercised free of interference by the Director of Biosecurity and that information relevant to a review is made available by the Director of Biosecurity. For example, the Director of Biosecurity may be required to provide assistance in gaining access to information on premises owned or operated by the Agriculture Department. Additionally, the Inspector-General may request the Director of Biosecurity to give information, produce documents or answer questions relevant to a review.
Clause 14  Inspector-General may retain and make copies of documents
This clause sets out the circumstances in which the Inspector-General may retain and make copies of a document produced under clauses 10 or 13 of the Bill. Specifically, if a document is produced under clause 10 or 13 the Inspector-General may take possession of, and make copies of, the document or take extracts from the document. The Inspector-General may also retain possession of the document for such period as is necessary for the purpose of the review to which the document relates. If a document is produced under clause 10 or 13 for the purpose of setting a review program and a review is to be conducted, the document may continue to be kept for as long as is necessary for the purpose of conducting the review (see section 7). This ensures that the Inspector-General can only retain possession of the document for as long as is necessary and only in the particular circumstances described above.

While the Inspector-General retains possession of a document, he or she must allow a person otherwise entitled to possession of the document (or another person authorised by the person) to inspect the document, make copies of the document and take extracts from the document at the times that the person would ordinarily be able to do so. This requirement ensures that if the document retained is relevant to, for example, a particular biosecurity operation, a person can inspect, make copies or take extracts to allow for the continued running of the operation with minimal interruption.

Clause 15  Inspector-General must consider all evidence provided
This clause provides that the Inspector-General is to consider all evidence provided and in particular must have regard to:

- any information given, documents produced and answers to questions given in relation to the review under clause 10 or 13
- any submission made in response to an invitation given under subclause 11(1) unless the person who made the submission has required its return or has withdrawn it under subclause 11(4), and
- any part of a submission made in response to an invitation under subclause 11(1), unless the person who made the submission has required that part to be returned or has withdrawn that part under subclause 11(4).

In conducting a review the Inspector-General is not precluded from having regard to other information. This clause ensures that all relevant information is taken into consideration by the Inspector-General when conducting a review.

Division 3—Civil penalty and related provisions

Clause 16  Civil penalties—failure to comply with notice etc
The clause provides a civil penalty for failure to comply with a notice given by the Inspector-General. Subclause (1) provides that if a person has been given a notice under subclause 10(2) requiring the person to give information, to produce documents or certified copies of documents specified in the notice, the person must comply with the notice within the period specified in the notice. Further, subclause (2) provides that if a person has been given a notice under subclause 10(2) requiring the person to attend to answer questions at the time and place specified in the notice, the person must comply with the notice.

Subclause (3) provides that if a person is required to take an oath or make an affirmation, the person must comply with that requirement. Finally, subclause (4) provides that if a person has been given a notice under subclause 10(2) requiring the person to attend before the Inspector-
General to answer questions relevant to the review, the person must answer a question put to him or her by the Inspector-General.

A person is liable to a civil penalty if the person contravenes subclause (1), (2), (3) or (4). The maximum penalty for contravention of subclause (1), (2), (3) or (4) is 30 penalty units. Civil penalty proceedings for contravention of this civil penalty provision may be brought under the Biosecurity Act in accordance with clause 65 of the Bill.

**Clause 17  Self-incrimination etc**

This clause provides that a person is not excused from giving information, producing a document or answering questions relevant to a review, as required by a notice given under clause 10, on the ground that doing so might tend to incriminate the person or make the person liable to a penalty. The effect of this provision is that it abrogates an individual’s right to the privilege against self incrimination as part of the information gathering function of the Inspector-General pursuant to clause 9.

However, subclause (2) provides that, in the case of an individual:
- the information given, the document produced or the answer given
- giving the information, producing the document or answering the question, and
- any information, document or thing obtained as a direct or indirect consequence of given the information, producing the document or answering the question are not admissible against the individual:
  - in any civil proceedings, other than proceedings for the contravention of subclause 16(1), (2) or (4) of the Bill (civil penalties for failure to comply with a notice), or
  - in criminal proceedings, other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which relate to false or misleading information or documents) that relates to this Bill or proceedings for an offence against section 149.1 of the *Criminal Code* (which relates to the obstruction of Commonwealth public officials) that relates to the Bill.

The effect of subclause (2) is that self-incriminatory disclosures cannot be used against the person who makes the disclosure, either directly in court (known as ‘use’ immunity) or indirectly to gather other evidence against the person (known as ‘derivative use’ immunity).

Abrogation of the privilege against self-incrimination is discussed above in detail as part of the Human Rights Compatibility Statement. The abrogation of the privilege against self-incrimination is in the public interest as it will ensure that the Inspector-General has access to the information and documents needed to provide oversight and public confidence that biosecurity risks are being managed effectively through a formal system of auditing and verification activities.

The abrogation of privilege against self-incrimination as contained within clause 17 is both reasonable and proportionate due to the protections contained in clause 17 and elsewhere in the Bill. Protections include that: a person may request that the information not be made public (subclauses 10(6) and (7)); certain material must be excluded from reports (clause 38); it is an offence to disclose information collected under the Act (clause 64). As a result of these safeguards there is low harm to the individual when balanced against the public interest of protecting Australia’s strong biosecurity framework.
Upholding the privilege against self incrimination in relation to individuals who have information or documents that are relevant to the scope of a review—particularly information or documents that could potentially lead to recommendations for improvement—could have significant consequences. Such consequences could include increased vulnerability to biosecurity risks to agriculture, fisheries, or forestry productivity or increased costs associated with controlling pests and diseases. Abrogating the privilege against self-incrimination will allow the Inspector-General to access information vital to exposing any potential weaknesses in the biosecurity system, helping to ensure the most effective management of biosecurity risks continues into the future.

Whilst in some cases it may be feasible to obtain information or documents by other means (for example, warrants), the majority of people from whom information or documents will be sought are voluntary users of the biosecurity system. Such users, for example, include people or entities that have voluntarily entered into an approved arrangement pursuant to the Biosecurity Bill. Any reduction in the ability of the Inspector-General to make timely recommendations to the Agriculture Minister could significantly increase the risk of a disease or pest entering, establishing or spreading to Australia, or within Australian territory. Without these limitations, the Inspector-General’s ability to provide recommendations about improvements to processes that manage biosecurity risks will be significantly reduced. Removal of the privilege ensures that the Inspector-General will be able to gather information from persons with specific knowledge that would aid a review into biosecurity processes, which need to occur as urgently as possible (for example, when reviewing biosecurity emergency procedures). In some cases one person may have specific knowledge relevant to a review—further justifying the importance of abrogating the privilege.

**Clause 18 Protection from liability for persons complying with a notice or making a submission**

This clause provides protection from liability for a person who, in good faith, gives information, produces a document or answers a question relevant to a review, as required by a notice given under clause 10. The person is not liable to any proceedings for contravening a law of the Commonwealth, or a state or territory because of that conduct or to civil proceedings for loss, damage or injury of any kind suffered by another person because of this conduct. The protection operates so that a person is able to comply with a notice given by the Inspector-General (and where the person may be liable to a civil penalty for not complying with the notice given by the Inspector-General) without being liable to other civil or criminal proceedings because of the conduct of complying with the notice.

A more limited protection extends to a person who, in good faith, makes a submission in response to an invitation from the Inspector-General under clause 11 to make submissions to a review and protects that person from civil proceedings for loss, damage or injury of any kind suffered by another person because of making the submission. This protection applies so as to not discourage a person from making a voluntary submission.

**Clause 19 No loss of legal professional privilege**

This clause provides information or a document does not cease to be the subject of legal professional privilege merely because it is:

- given or produced in response, or included or referred to in a response, to a notice from the Inspector-General given under clause 10
- referred to in answering a question asked in relation to a notice from the Inspector-General given under clause 10
• included or referred to in a submission made in response to an invitation from the Inspector-General to make submissions to a review under clause 11, or
• given to the Inspector-General in response to a request under clause 13.

The purpose of this clause is to ensure:
• that the Inspector-General can have access to all legal advice obtained by the Director of Biosecurity that is relevant to a review of biosecurity functions and processes, but
• that future administration of the biosecurity laws by the Director of Biosecurity is not compromised by unintended waiver of legal professional privilege resulting from disclosure of legal advice to the Inspector-General.

Clause 40 restricts the way in which the Inspector-General may report the content of privileged legal advice disclosed in the course of a review.

Division 4—Entering premises

Subdivision A—Entering premises to exercise review powers

Clause 17  Entering premises to exercise preview powers
This clause provides that for the purpose of conducting a review (and subject to subclauses (2) and (3)) the Inspector-General may, enter any of the following premises:
(a) premises that are owned or controlled by the Commonwealth where functions are or have been performed, or powers are or have been exercised, under the Biosecurity Act by the Director of Biosecurity, biosecurity officers or biosecurity enforcement officers
(b) premises at which a biosecurity industry participant carries out biosecurity activities as authorised by an approved arrangement covering the biosecurity industry participant, or
(c) any other premises where functions are or have been performed, or powers are or have been exercised, under the Biosecurity Act by the Director of Biosecurity, biosecurity officers or biosecurity enforcement officer.

Upon entering the premises, the Inspector-General may exercise the review powers conferred on the Inspector-General in clauses 21 and 22 of the Bill. Subclause (2) provides that the Inspector-General may enter the premises referred to above at any reasonable time.

Subclause (3) provides that the Inspector-General is not authorised to enter premises referred to at paragraph (c) above unless the occupier of the premises has consented to the entry and the Inspector-General has identified himself or herself if required by the occupier, or if entry is made under a review warrant. If entry to premises is with the occupiers consent, the Inspector-General must leave the premises if the occupier withdraws consent (see clause 26).

Subdivision F (of Division 4 of Part 3) provides for the issue of a review warrant.

The powers of entry are both reasonable and proportionate as the Bill only allows the Inspector-General of Biosecurity to conduct searches without a warrant or consent on relevant biosecurity premises (and not, for example, residential premises) for the purpose of reviewing whether biosecurity functions and activities are being carried out appropriately and effectively. ‘Relevant biosecurity premises’ is intended to include premises owned or operated by the Agriculture Department or other premises which are already subject to
requirements under the Biosecurity Bill. This may include entry to premises under an approved arrangement, where consent is implied by the voluntary nature of the arrangement (and will be a condition of the approved arrangement).

**Clause 21 General review powers**

This clause provides that the Inspector-General may exercise any of the following powers (review powers) in relation to premises entered under clause 20 (including under a review warrant):

(a) the power to search the premises and any thing on the premises that the Inspector-General thinks that may be relevant to a review
(b) the power to examine or observe any activity conducted on the premises that the Inspector-General thinks may be relevant to a review
(c) the power to inspect, examine, take measurements of, or conduct tests on any thing on the premises that the Inspector-General thinks may be relevant to a review
(d) the power to take and keep samples of any thing on the premises that the Inspector-General thinks may be relevant to a review
(e) the power to make any still or moving image or any recording of the premises or any thing on the premises that the Inspector-General thinks may be relevant to a review
(f) the power to inspect any document on the premises that the Inspector-General thinks may be relevant to a review
(g) the power to take extracts from, or make copies of, any such document
(h) the power to take onto the premises such equipment and materials as the Inspector-General requires for the purposes of exercising powers in relation to the premises, and
(i) the powers set out in subclauses 22(1) and (3).

The powers outlined above allow the Inspector-General to access sufficient information to complete a review of biosecurity activities, to ensure the accountability of biosecurity processes and functions. Access to information held by a person on the premises may provide evidence to evaluate the effectiveness of biosecurity activities undertaken by the Director of Biosecurity or the department. Information may include, for example, data extracted from a particular computer on the premises.

The review powers are intended to be exercised solely for the purpose of gathering information relevant to a review (or the setting of a review program pursuant to clause 7) of biosecurity functions or processes. Access to this information allows the Inspector-General to recommend improvements (and report recommendations to the Agriculture Minister), ensuring that the processes and functions of the department remain effective in managing biosecurity risk.

**Clause 22 Operating electronic equipment**

This clause provides that the review powers of the Inspector-General include the power for the Inspector-General to operate electronic equipment on a premises and use a disk, tape or other storage device that is on the premises and can be used with the equipment or is associated with it.
Subclause (2) provides that the review powers include the powers mentioned in subclause (3) below if any information relevant to a review (relevant data) is found on the electronic equipment. The powers in subclause (3) that the Inspector-General can exercise are:

- the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises, or
- the power to operate electronic equipment on the premises to transfer the relevant data onto a disk, tape or other storage device (that is brought to the premises for the exercise of the power or is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises) and remove the disk, tape or other storage device from the premises.

The Inspector-General may only operate electronic equipment as outlined above if the Inspector-General believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment. This is to ensure that the Inspector-General takes due care with equipment that is likely to be valuable to the occupier of the premises when obtaining the information relevant to a review. If the Inspector-General causes damage to electronic equipment, clause 31 outlines the circumstances when the Commonwealth is liable to pay compensation.

**Clause 23 Expert assistance to operate electronic equipment**

This clause gives the Inspector-General the power to secure electronic equipment that is on the premises if the Inspector-General has entered premises under a review warrant and suspects on reasonable grounds that:

- there is information relevant to a review (relevant data) on the premises
- the relevant data may be accessible by operating the equipment
- expert assistance is required to operate the equipment, and
- the relevant data may be destroyed, altered or otherwise interfered with if the Inspector-General does not take action to secure the equipment.

The equipment may be secured by locking it up, placing a guard or any other means. This allows the Inspector-General to secure equipment that may be used to access relevant data, where the Inspector-General requires a person with a higher level of expertise than the to access the relevant data. The expert is authorised to enter premises under clause 25 (persons assisting the Inspector-General).

The Inspector-General must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the Inspector-General’s intention to secure the equipment and the fact that it may be secured for up to 24 hours. This ensures that the occupier of the premises is informed about what actions are being taken with regard to their property and relevant timeframes.

The equipment may be secured for up to 24 hours, or until it has been operated by an expert, whichever occurs earlier. This ensures that the equipment is only secured and the occupier inconvenienced for as long as is necessary to obtain the relevant data. The 24 hour period gives the Inspector-General time to locate an expert and for that expert to access the information.

The Inspector-General may apply to an issuing officer for an extension of the 24 hour period, if the Inspector-General believes on reasonable grounds that the equipment needs to be secured for longer than 24 hours. Before making an application for an extension of time, the
Inspector-General must give notice to the occupier of the premises or another person who apparently represents the occupier of the Inspector-General’s intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application. The 24 hour period may be extended more than once. The provisions of Division 4 of the Bill relating to the issue of review warrants apply, with such modifications as are necessary, to the issue of an extension.

An extension to the 24 hour period is intended to give the Inspector-General more time to locate an expert and for that expert to access the information if it is required. Allowing the occupier a chance to be heard in relation to an application ensures procedural fairness by allowing the occupier to provide information that might be relevant to the issuing officer’s final decision.

Subdivision B—Entering adjacent premises to gain access to other premises

Clause 24  Entering adjacent premises to gain access to other premises
This clause provides that the Inspector-General may enter any premises (adjacent premises) if it is necessary to do so for the purpose of gaining access to other premises to conduct a review.

Access to an adjacent premises may be required if the Inspector-General needs to review powers exercised or functions performed under the Biosecurity Bill in a premises that can only be accessed via the adjacent premises (for example, the Inspector-General needs to review powers exercised by a biosecurity officer at a particular premises but the only access to that warehouse is through the driveway adjacent to it).

This clause provides that the Inspector-General is not authorised to enter adjacent premises unless the occupier of the premises has consented to the entry and the Inspector-General has identified himself or herself (if required by the occupier) or entry is made under an adjacent premises warrant. If entry is made with consent of the occupier, the Inspector-General and any persons assisting must immediately leave the premises if the consent is revoked (see clause 26). The ability to revoke consent and have the Inspector-General leave the premises ensures the occupier’s right to privacy is adequately protected. See Subdivision F of this Division in relation to issue of an adjacent premises warrant.

If the Inspector-General enters premises under an adjacent premises warrant, the Inspector-General and any person assisting, must take all reasonable steps to ensure that they cause as little inconvenience to the occupier of the premises as is practicable.

Subdivision C—Persons assisting

Clause 25  Persons assisting Inspector-General
This clause sets out the framework for persons assisting the Inspector-General. In entering premises under clause 20 or 24 (including under a review warrant or an adjacent premises warrant) and exercising powers or performing functions or duties under this Division, the Inspector-General may be assisted by certain people (who are defined as a person assisting the Inspector-General) if that assistance is necessary and reasonable. This clause outlines that a person assisting the Inspector-General is a member of staff, a consultant engaged under clause 44 or a person who has the requisite technical expertise. The Inspector-General, for example, may not have the appropriate technical expertise to access information on a
computer system, or to operate a piece of machinery on premises. As a further example, heavy items may be required to be moved by more than one person to enable the Inspector-General to exercise the review powers under clause 21 and 22 effectively.

Subclause (3) provides that a person assisting the Inspector-General may enter the premises, may exercise powers under this Division and must do so in accordance with a direction given to the person assisting by the Inspector-General. The requirement for a person to act in accordance with a direction of the Inspector-General avoids improper use of power by a person assisting the Inspector-General.

A power exercised by a person assisting the Inspector-General as mentioned in subclause (3) is taken for all purposes to have been exercise by the Inspector-General. This ensures that the ultimate responsibility for powers exercised on the premises remains with the Inspector-General.

Subclause (6) provides that if a direction is given in writing to a person assisting under paragraph (3)(c)—that is, a direction given by the Inspector-General to a person assisting in relation to entering premises and exercising powers—the direction is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003.

**Subdivision D—Obligations and incidental powers of Inspector-General**

**Clause 26 Consent**
This clause relates to obtaining consent of an occupier when entering premises. Before obtaining the consent of an occupier of premises for the purposes of paragraph 20(3)(a) or 24(2)(a), the Inspector-General must inform the occupier of the reasons for entering the premises and that the occupier may refuse consent.

Individual protections are afforded to the occupier by allowing that occupier to refuse consent. The ability to refuse consent ensures that entry without a warrant, which could constitute an invasion of personal privacy, is only allowed when the person consents with the request to enter the premises.

This clause provides that consent has no effect unless the consent is voluntary and that consent may be expressed for a particular period. If expressed for a particular period, the consent covers that period unless withdrawn earlier. Consent may be withdrawn by the occupier at any time and if the Inspector-General enters premises because of the consent of the occupier, the Inspector-General and any person assisting the Inspector-General must leave the premises if the consent ceases to have effect.

**Clause 27 Notice of entry etc.**
This clause provides that before the Inspector-General enters premises under clause 20 or 24 (including under a review warrant or an adjacent premises warrant), the Inspector-General must give reasonable notice of the proposed entry to the occupier, and if the premises are owned or controlled by the Commonwealth, also provide reasonable notice to the Director of Biosecurity. Informing the occupier that the Inspector-General intends to enter the premises ensures that the occupier is kept informed and that a person’s right to privacy is not interfered with unnecessarily.
Subclause (2) provides that it entry is under a review warrant or an adjacent premises warrant the Inspector-General must announce that he or she is authorised to enter the premises, show identification to the occupier (or another person who apparently represents the occupier) if the occupier is present at the premises and give any person present an opportunity to allow entry to the property.

Clause 28 Inspector-General to be in possession of warrant
In executing a review warrant or adjacent premises warrant, the Inspector-General must be in possession of the warrant or a copy of the warrant. This ensures that the occupier of a premises (or a person apparently representing the occupier of the premises) is able to view the warrant and is aware of the scope of the authorisation for the Inspector-General to enter premises and exercise certain powers.

Clause 29 Details of warrant etc. to be given to occupier
This clause provides that where the Inspector-General is executing a review warrant or adjacent premises warrant in relation to premises, and the occupier of the premises or other person who apparently represents the occupier is present, the Inspector-General must make a copy of the warrant available to the occupier or other person. This obligation ensures that the occupier or other person are granted an opportunity to examine the warrant and are made aware of the scope of the authorisation for the Inspector-General to exercise certain powers.

The Inspector-General must also inform the occupier or other person of their rights and responsibilities under Subdivision E of the Bill. This ensures that the occupier or other person is informed of their right to observe the exercise of powers by the Inspector-General while on the premises and that they have a responsibility to provide facilities and assistance to the Inspector-General and any person assisting the Inspector-General.

Clause 30 Use of force
This clause provides that in exercising a review warrant or an adjacent premises warrant the Inspector-General, or a person assisting the Inspector-General, may use such force against things as is necessary and reasonable in the circumstances. The use of force may allow, for example, for the opening of doors or the movement of things to assist with the execution of a warrant.

This clause does not authorise the use of force against a person. This is to ensure protection to individuals and to clarify that physical force on an individual cannot be used in the exercise of powers authorised by a warrant.

Clause 31 Compensation for damage to electronic equipment
This clause provides for the circumstances in which a person is to be paid reasonable compensation for damage done to electronic equipment. This is to ensure that where the Inspector-General or persons assisting operate electronic equipment in line with the review powers under this Division, that persons are compensated for damage to electronic equipment.

Specifically, where electronic equipment has been operated in accordance with Division 4 of Part 3 and as a result damage is caused to the equipment, the data recorded on the equipment is damaged, or programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted, and that damage or corruption occurs:
- because insufficient care was exercised in selecting the person who was to operate
  the equipment;
- insufficient care was exercised by the person operating the equipment,

the Commonwealth must pay the owner of the equipment, or the user of the data or programs,
such reasonable compensation for the damage or corruption as the Commonwealth and the
owner or user agree on.

However, if the Commonwealth and the owner or user cannot agree to the amount of
reasonable compensation, the owner, or user, may institute proceedings in a relevant court,
for such reasonable amount of compensation as the relevant count determines.

This clause provides that in determining the amount of compensation payable, regard is to be
had to whether the occupier of the premises, or the occupier’s employees or agents, if they
were available at the time, provided any appropriate warning or guidance on the operation of
the equipment.

**Subdivision E—Occupier’s rights and responsibilities**

**Clause 32 Right to observe exercise of powers**
This clause allows the occupier of a premises entered by the Inspector-General under clause
20 or 24 (including under a review warrant or an adjacent premises warrant), or another
person who apparently represents the occupier, to observe the exercise of powers by the
Inspector-General while on the premises (if the occupier or other person is present at the
premises). The right to observe the exercise of the powers ceases if the occupier or other
person impedes the exercise of powers. This provision does not prevent the execution of the
warrant in two or more areas of the premises at the same time.

This clause ensures that the occupier or other person may be satisfied that the Inspector-
General is not doing anything outside of what is permitted under clause 20 or 24 and that the
occupier or other person is aware of anything that is happening on the premises.

**Clause 33 Responsibility to provide facilities and assistance**
If the Inspector-General enters premises under clause 20 or 24 (including under a review
warrant or an adjacent premises warrant), subclause (1) provides that the occupier of the
premises, or another person who apparently represents the occupier, must provide the
Inspector-General (and any person assisting the Inspector-General) with all reasonable
facilities and assistance for the effective exercise of powers. For example, a person may be
required to unlock a door for the Inspector-General to gain access to a particular room on the
premises, or provide access to a computer on the premises. A person commits an offence if
the person contravenes this subclause (1). The maximum penalty for contravention of
subclause (1) is 30 penalty units.

This clause ensures that the Inspector-General can efficiently exercise powers without undue
delay by having to seek facilities elsewhere or requiring other persons to provide assistance.
Subdivision F—Issue of warrants

Clause 34  Review warrants
This clause provides that the Inspector-General may apply to an issuing officer for a review warrant in relation to premises for the purpose of conducting a review.

The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that it is reasonably necessary that the Inspector-General should have access to the premises for the purpose of conducting a review. However, the issuing officer must not issue the warrant unless the Inspector-General or some other person has given to the issuing officer, either orally, or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

The warrant must:
- describe the premises to which the warrant relates
- state that the warrant is issued under this clause
- state the purpose for which the warrant is issued
- authorise the Inspector-General from time to time while the warrant remains in force:
  - to enter the premises, and
  - to exercise the powers set out in this Division for the purpose of conducting a review
- state whether entry is authorised to be made at any time of the day or during specified hours of the day, and
- specify the day (not more than one month after the issue of the warrant) on which the warrant ceases to be in force.

Clause 35  Adjacent premises warrants
This clause provides that the Inspector-General of Biosecurity may apply to an issuing officer for an adjacent premises warrant in relation to premises for the purpose of gaining access to other premises to conduct a review.

The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that it is reasonably necessary that the Inspector-General should have access to the premises for the purpose of gaining access to other premises to conduct a review. However, the issuing officer must not issue the warrant unless the Inspector-General or some other person has given to the issuing officer, either orally, or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.

The warrant must:
- describe the premises to which the warrant relates
- state that the warrant is issued under this clause
- state the purpose for which the warrant is issued
- authorise the Inspector-General from time to time while the warrant remains in force:
  - to enter the premises, and
  - to remain on the premises for such period as is reasonably necessary for the purpose of gaining access to other premises to conduct a review
Clause 36  Powers of issuing officers

This clause provides that a power conferred on an issuing officer by this Division is in a personal capacity and not as a court or a member of the court. The issuing officer does not need to accept the power conferred upon him or her.

Where an issuing officer exercises a power conferred by this Division the officer will have the same protection and immunity as if they were exercising the power as the court of which the issuing officer is a member, or as a member of the court of which the issuing officer is a member. An issuing officer includes a Magistrate, or a Judge of the Federal Court or the Federal Circuit Court.

Part 4—Reports on reviews

Clause 37  Reporting on reviews

This clause provides that the Inspector-General must prepare a written report for the Agriculture Minister after completing a review, apart from a Part 5 review to which this clause does not apply (see clause 47 in relation to reporting requirements for a Part 5 review). The report must set out the subject matter and findings of the review, the evidence and other material on which those findings are made and any recommendations resulting from the review. The Inspector-General may also provide a copy of the report to the Health Minister and the Director of Biosecurity.

The clause also states that the report must not include recommendations in relation to, or comments on:

- the policy of the Commonwealth Government in relation to managing biosecurity risk, or
- particular decisions made under the Biosecurity Act or any other law of the Commonwealth.

In particular, the report must not include recommendations in relation to, or comments on:

- a decision relating to a permit to bring or import goods into Australian territory (made under Division 3 of Part 3 of Chapter 3 of the Biosecurity Act)
- the outcome of a BIRA, or
- the scientific analysis of anything done in the performance of a function, or the exercise of a power, under the Biosecurity Act.

The limitations provided for in this clause are to ensure that the Inspector-General’s role is limited to reviewing and reporting on biosecurity functions and processes only, and is not to extend to commenting on the merits of scientific or policy decisions.

Clause 38  Certain material to be excluded from reports

The effect of this clause is to exclude certain material from a report on a review, including a Part 5 review, made by the Inspector-General. Specifically, a report on a review must not name, or otherwise specifically identify:
• an officer or employee of a Commonwealth body (other than the Director of Biosecurity)
• an officer or employee of a State or Territory body
• a consultant to the department, or
• a member of the Australian Defence Force

as being a person whose conduct has been considered in the course of a review.

Further, subclause (2) provides that a report on a review must not include any of the following:

(a) information given in response to a notice given under clause 10 if the person who gave the information requested that the information not be published because the information is confidential, and the Inspector-General agreed to the request

(b) information contained in a document produced in response to a notice given under clause 10 if the person who produced the document requested that it not be published because the information is confidential, and the Inspector-General agreed to the request

(c) any submission made in response to an invitation given under subclause 11(1) if the person who made the submission has required its return or has withdrawn it under subclause 11(4), or

(d) any part of a submission made in response to an invitation given under subclause 11(1) if the person who made the submission has required that part to be returned or has withdrawn that part under subclause 11(4).

The limitations on the inclusion of specific material in a report as outlined in this clause ensure that reports given by the Inspector-General are focused on addressing systemic issues rather than the particular actions of individuals. In addition, the clause protects persons from undue interference with their right to privacy.

**Clause 39 Including criticism in reports**

This clause outlines a process for procedural fairness where the Inspector-General proposes to include material in a report on review, including a Part 5 review, that is expressly or impliedly critical of any person listed in subclause (1). Material that is critical of a person must not be included in a report unless a relevant respondent has been given an opportunity to make a submission.

Specifically, subclause (1) provides that this clause applies if it is proposed to include material in a report on a review that is expressly or impliedly critical of any of the following persons:

• the Director of Biosecurity
• the Director of Human Biosecurity
• a chief human biosecurity officer, a human biosecurity officer or a group of such officers
• a biosecurity officer, a biosecurity enforcement officer or a group of such officers,
• an officer or employee of a Commonwealth body
• a member of the Australian Defence Force
• an officer or employee of a state or territory body
• a consultant to the department
• a biosecurity industry participant.

Subclause (2) provides that the material must not be included in the report unless:
in the case of criticism relation to the Director of Human Biosecurity or a or a chief human biosecurity officer, a human biosecurity officer or a group of such officers—the Inspector-General has give the Director of Human Biosecurity a reasonable opportunity to make submissions to the Inspector-General in relation to the material, and

in any other case—the Inspector-General has given the Director of Biosecurity a reasonable opportunity to make submission sot the Inspector-General in relation to the material.

Submissions may be made orally or in writing or both (subclause (3)), and oral submissions may be made either by the Director of Human Biosecurity or the Director of Biosecurity personally, or by another person on behalf of the Director of Human Biosecurity or the Director of Biosecurity (subclause (4)). It is important that the Director of Human Biosecurity or the Director of Biosecurity is given the opportunity to address the criticism and give the Inspector-General information to ensure the Inspector-General has correct and complete information and that the criticism is not unfounded.

Subclause (5) protects the Director of Human Biosecurity or the Director of Biosecurity from liability, where the Director, in good faith, makes a submission under this clause. The Director of Human Biosecurity or the Director of Biosecurity is not liable to any proceedings for contravening a law of the Commonwealth because of making the submission or to civil proceedings for loss, damage or injury of any kind suffered by another person because of making the submission.

Pursuant to subclause (6), information or a document that is included or referred to in a submission made under this clause does not cease to be the subject of legal professional privilege because of that inclusion or reference.

Clause 40  Legal professional privilege
This clause provides at subclause (1) that information or a document must not be included in a report on a review, including a Part 5 review, if the information or document:

- has been given or produced to the Inspector-General under clause 10, 13, 39 or 44, and
- is either the subject of legal professional privilege or derived from information or a document that is the subject of legal professional privilege.

The purpose of this clause is to ensure that legal professional privilege applying to copies of legal advice provided to the Inspector-General—which is not lost by disclosure to the Inspector-General (pursuant to clause 19)—is not subsequently waived by public disclosure in a report by the Inspector-General.

However subclause (2) provides that, despite subclause (1), a report on a review may include a statement to the effect that legal advice was considered in the course of the review (where the legal advice was contained in information or a document that was given or produced to the Inspector-General under clause 10, 13, 39 or 44) and outlining in general terms the relevance of that advice, or of any aspect of it, to the review.

If a report on a review includes a statement relating to legal advice as mentioned in subclause (2), the advice does not cease to be the subject of legal professional privilege merely because the report includes the statement, the report is given to the Agriculture Minister, or the report
or any part of it is tabled or made publicly available under clause 41 or 47. This puts beyond
doubt the legislative intention that legal professional privilege is not waived by a reference in
a report on a review to the Inspector-General having considered legal advice in the course of
a review.

**Clause 41 Tabling etc. of reports**

This clause imposes an obligation on the Agriculture Minister to cause a copy of each report
on a review to be tabled in each House of the Parliament or to be otherwise made publicly
available, apart from a Part 5 review to which this clause does not apply (see clause 47 in
relation to reporting requirements for a Part 5 review). The clause also provides that if the
Inspector-General recommends that a report not be made publically available for a specified
period the report must not be tabled or otherwise made publically available until after the
specified period ends.

Unless the report has been made publically available earlier the report must be table in each
House of Parliament within 25 parliamentary sittings days of that House after the Agriculture
Minister receives the report, or if the Inspector-General recommends that report not be made
publically available for a specified period, on the day the specified period ends.

This clause ensures public transparency of reports made by the Inspector-General. The
Inspector-General may recommend that the tabling or public release of a report be delayed in
certain circumstances. For example, the publication of a report may be delayed where a
review uncovers a flaw in the system that could increase biosecurity risk if exploited. The
Inspector-General may recommend delay until the flaw can be remedied.

**Part 5—Requests for review of BIRA process**

**Clause 42 Person may request Inspector-General to review BIRA process**

This clause outlines the right of a person to appeal the process of conducting a BIRA. The
purpose of the clause is to replace the current right to lodge an appeal in relation to the
process for conducting an Import Risk Analysis (IRA) to the IRAAP. A person may request
the Inspector-General to review the process of conducting a particular BIRA if the person
considers that:

- the process for conducting the BIRA did not accord with the process required by the
  Biosecurity Act
- the departure from the process was significant, and
- the person’s interests were, are or may be adversely affected by the failure to
  conduct the BIRA in accordance with the process required by that Act.

An appeal must be in writing, set out the grounds for making the request and be made within
the prescribed period after the provisional BIRA report required by section 167 of the
Biosecurity Act has been published.

The right to appeal against the process of conducting a BIRA is to ensure that a particular
BIRA process has been conducted correctly in accordance with the legislative requirements.
The right to appeal extends to industry and other persons who have a legitimate interest in the
outcome of the BIRA process. The right to appeal does not extend to the appeal of the
conduct of anything other than the process for the particular BIRA. For example, the right
does not extend to those who wish to appeal the scientific analysis of a particular BIRA.
Clause 43     Inspector-General to consider appeals
As soon as practicable after receiving a request made under clause 42 in relation to a BIRA, the Inspector-General must consider the request. This is to ensure that if a request is considered valid and a review of the particular BIRA process is to be conducted, the review process is completed in a timely manner and does not adversely affect the timeframes for completion of the final BIRA. If, the Inspector-General is satisfied, having regard to the grounds set out in the request, that it is appropriate to review the process of conducting the BIRA, the Inspector-General must review the process of conducting a BIRA in accordance with Part 5. In addition, the Inspector-General is required to notify the person who made the request, in writing, when the Inspector-General’s report is published under clause 47.

If, the Inspector-General is not satisfied, having regard to the grounds set out in the request, that it is appropriate to review the process of conducting the BIRA, the Inspector-General must notify the person who made the request in writing of that decision.

Whether a person is considered to have valid grounds of appeal or not is at the discretion of the Inspector-General and is not subject to review. This is because the Inspector-General’s role in reviewing the BIRA process is by nature a recommendation to the Director of Biosecurity, rather than a decision which affects the outcome of the final BIRA.

Clause 44     Assistance from the Director of Biosecurity
This clause provides that the Director of Biosecurity must comply with any reasonable request for assistance from the Inspector-General for the purposes of conducting a review under Part 5. The Inspector-General may request the Director of Biosecurity to give information, produce documents or answer questions relevant to the review so that the Inspector-General is able to effectively conduct a review based on all relevant information or documents.

The clause also clarifies that information or a document given to the Inspector-General in response to a request under this clause does not cease to be the subject of legal professional privilege merely because it is given to the Inspector-General in response to that request.

Clause 45     Inspector-General may retain and make copies of documents
This clause sets out the circumstances in which the Inspector-General may retain and make copies of a document produced under clause 44 of the Bill. Specifically, if a document is produced under clause 44 the Inspector-General may take possession of, and may make copies of, the document or take extracts from the document. The Inspector-General may also retain possession of the document for such period as is necessary for the purpose of the review to which the document relates.

While the Inspector-General retains possession of a document, the Inspector-General must allow a person otherwise entitled to possession of the document (or another person authorised by the person) to inspect the document, make copies of the document and take extracts from the document at the times that the person would ordinarily be able to do so. This requirement ensures that if the document retained is relevant to, for example, a particular biosecurity operation, a person can inspect, make copies or take extracts to allow for the continued running of the operation with minimal interruption.
Clause 46 Inspector-General to consider all evidence provided
This clause provides that in conducting review under Part 5, the Inspector-General must have regard to any information given, documents produced and answers to questions given under clause 44 and, any other information the Inspector-General considers relevant.

Clause 47 Inspector-General must prepare report
This clause provides that after completing a review of the process of conducting a BIRA under this Part, the Inspector-General must prepare a report on the review. This is to ensure that the outcomes of the review are available to be viewed by any interested party. The report must be published within the period and in the manner, prescribed in the regulations. It is likely that the regulations will specify the form of the report and the method in which it is made publicly available.

Additionally, the report must set out the subject matter and findings of the review, the evidence and other material on which those findings are made and any recommendations resulting from the review. Note that certain material must not be included in a report prepared under this clause (see clauses 38, 39, 40 and 61) The Inspector-General must also provide a copy of the report to the Director of Biosecurity to allow the Director of Biosecurity to consider the Inspector-General’s findings in completing the final BIRA report.

The clause also states that the report must not include recommendations in relation to, or comments on:
- the policy of the Commonwealth Government in relation to managing biosecurity risk, or
- particular decisions made under the Biosecurity Act or any other law of the Commonwealth.

In particular, the report must not include recommendations in relation to, or comments on:
- a decision relating to a permit to bring or import goods into Australian territory (made under Division 3 of Part 3 of Chapter 3 of the Biosecurity Act)
- the outcome of a BIRA to which the report relates, or
- the scientific analysis of anything done in the performance of a function, or the exercise of a power, under the Biosecurity Act.

Part 6—Administrative provisions

Division 1—Appointment etc. of Inspector-General of Biosecurity

Clause 48 Appointment
This clause provides that the Inspector-General is to be appointed by the Agriculture Minister by written instrument. The Agriculture Minister must not appoint a person as the Inspector-General unless the Minister is satisfied that the person has suitable qualification or experience in relevant scientific auditing or systems assessment disciplines. The Inspector-General may be appointed on a full-time or part-time basis.

The appointment of the Inspector-General by the Agriculture Minister and the requirement for the Inspector-General to have suitable qualifications or experience ensures that the Inspector-General is appropriately qualified and can effectively operate as an independent reviewer of the Director of Biosecurity and processes relating to BIRAs.
Clause 49  Term of appointment
This clause provides that the Inspector-General holds office for the period specified in the instrument of appointment, up to a maximum period of five years. Providing a fixed term of five years for this office ensures that the Inspector-General can operate a review program without concerns about publishing adverse findings or being critical of aspects of the biosecurity system.

The Inspector-General must not hold office for a total of more than 10 years. Limitations on appointments are common in similar legislation to ensure that there is appropriate retention of personnel.

Clause 50  Remuneration and allowances
This clause provides that the remuneration for the Inspector-General is determined by the Remuneration Tribunal. If no determination of remuneration by the Tribunal is in operation, the Inspector-General is to be paid the remuneration that is prescribed by the regulations. The Inspector-General is also to be paid the allowances that are prescribed by the regulations. Clause 35 has effect subject to the Remuneration Tribunal Act 1973.

It is standard practice for remuneration of certain Commonwealth officers to be determined by the Remuneration Tribunal and it is the Tribunal’s role to determine, report on or provide advice about remuneration, including allowances and entitlements.

Clause 51  Leave of absence
Where the Inspector-General is appointed on a full-time basis the Inspector-General has the recreation leave entitlements that are determined by the Remuneration Tribunal. The Agriculture Minister may grant the Inspector-General leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

Where the Inspector-General is appointed on a part-time basis, the Agriculture Minister may grant leave of absence to the Inspector-General on the terms and conditions that the Minister determines.

When granting the Inspector-General leave of absence, the Agriculture Minister may consider the effect of the absence of the Inspector-General on the completion of the Inspector-General’s review program (developed in accordance with clause 7). Additionally, clause 57 allows the Agriculture Minister to appoint a person to act as the Inspector-General in certain circumstances.

Clause 52  Outside employment
Where the Inspector-General is appointed on a full-time basis, he or she must not engage in paid employment outside the duties of his or her office without the Agriculture Minister’s approval. This is to manage any conflicts of interest that may arise in relation to the outside employment and the Inspector-General’s functions under this Bill. Additionally, where the Inspector-General engages in paid employment without the approval of the Agriculture Minister, the Minister may terminate the Inspector-General’s appointment pursuant to subclause 56(2).

Where the Inspector-General is appointed on a part-time basis, the Inspector-General must not engage in paid employment that, in the Agriculture Minister’s opinion, conflicts or may
conflict with the proper performance of his or her duties. This recognises that the Inspector-General may engage in additional paid employment when appointed on a part-time basis, but that the additional paid employment must not conflict with the functions of the Inspector-General under this Bill. Similarly to above, where the Inspector-General engages in paid employment, that in the Agriculture Minister’s opinion conflicts with the Inspector-General’s performance of his or her duties, the Minister may terminate the Inspector-General’s appointment pursuant to subclause 56(3).

Clause 53 Disclosure of interests
This clause imposes an obligation on the Inspector-General to give written notice to the Agriculture Minister of all interests, pecuniary or otherwise, that the Inspector-General has or acquires and that conflict or could conflict with the proper performance of the Inspector-General’s functions. Failure to provide such notification, without reasonable excuse, is a ground for termination of the Inspector-General’s appointment by the Agriculture Minister (see paragraph 56(1)(d)).

Clause 54 Other terms and conditions
This clause provides that the Inspector-General holds office on terms and conditions (if any) in relation to matters not covered by this Bill that are determined by the Agriculture Minister. These terms may, for example, specify the location where the Inspector-General is to be based.

Clause 55 Resignation
This clause provides that the Inspector-General may resign his or her appointment by giving the Agriculture Minister a written resignation. The resignation takes effect on the day it is received by the Agriculture Minister or, if a later day is specified in the resignation, on that later day.

Clause 56 Termination of appointment
This clause outlines the grounds on which the Agriculture Minister may terminate the appointment of the Inspector-General. Given the importance of the Inspector-General’s role as an independent reviewer of the performance of functions and exercise of powers by the Director of Biosecurity it is crucial that the Minister be able to terminate the appointment of an Inspector-General who is not, or cannot, properly perform his or her duties. Some of the grounds for termination have been discussed above, however specifically, the Agriculture Minister may terminate the appointment of the Inspector-General:

(a) for misbehaviour  
(b) if the Inspector-General is unable to perform the duties of his or her office because of physical or mental incapacity  
(c) if the Inspector-General:  
   (i) becomes bankrupt  
   (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors  
   (iii) compounds with his or her creditors, or  
   (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors, or  
(d) if the Inspector-General fails, without reasonable excuse, to comply with clause 53.
The Agriculture Minister may also terminate the appointment of an Inspector-General appointed on a full time basis if the Inspector-General is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months, or if the Inspector-General engages, except with the Minister’s approval, in paid employment outside the duties of the Inspector-General’s office (see subclause 52(1) in relation to outside employment).

Similarly, the Agriculture Minister may also terminate the appointment of an Inspector-General appointed on a part-time basis if the Inspector-General is absent, except on leave of absence, for 7 consecutive days or for 14 days in any 12 months, or if the Inspector-General engages in paid employment that, in the Minister’s opinion, conflicts or may conflict with the proper performance of the Inspector-General’s duties (see subclause 52(2) in relation to outside employment).

Clause 57 Appointment of Acting Inspector-General
This clause enables the Agriculture Minister to appoint, by written appointment, a person to act as the Inspector-General during a vacancy in the office of the Inspector-General (whether or not an appointment has previously been made to the office). Also, a person may be appointed to act as the Inspector-General during any or all periods when the Inspector-General is absent from duty or from Australia or is unable, for any reason, to perform the duties of the office. In practice, it is likely that there will be a standing acting arrangement so that a vacancy can be quickly filled. For rules that apply to acting appointments, see sections 33AB and 33A of the Acts Interpretation Act 1901.

Division 2—Staff and consultants

Clause 58 Staff
This clause provides that the staff required to assist the Inspector-General are to be persons engaged under the Public Service Act 1999 who are made available by the Director of Biosecurity. Such staff will be employed by the Agriculture Department and specifically attributed to the Office of the Inspector-General of Biosecurity, to ensure the Inspector-General receives the assistance and support required to effectively carry out his or her functions under the Bill.

Clause 59 Consultants
This clause enables the Inspector-General to, on behalf of the Commonwealth, engage a person who has suitable qualifications and experience as a consultant to the Inspector-General. The terms and conditions of engagement of the consultant are to be determined, in writing, by the Inspector-General. The Inspector-General may engage a consultant, for example, where a consultant has specific skills or knowledge which are required to assist the Inspector-General to complete a review.

Part 7—Miscellaneous

Clause 60 Inspector-General to have regard to minimising disruption during review
Clause 60 provides, that in performing functions or exercising powers under the Bill, the Inspector-General must have regard to the desirability of minimising any resulting disruption to the performance of functions or the exercise of powers by the Director of Biosecurity, and the operations or work undertaken by persons who have been given a notice under clause 10 and occupiers of premises entered under clause 20 or 24.
This requirement ensures that persons are protected from undue interference with privacy, for example, during a review being carried out on particular premises. Additionally, this clause ensures that where business or commercial activities are being conducted, the Inspector General is to consider minimising the disruption caused by the exercise of his or her functions or powers under the Bill.

**Clause 61 Information that would be prejudicial to the public interest**

This clause empowers the Agriculture Minister to give the Inspector-General a certificate stating that the disclosure of information related to a specified matter would be prejudicial to the public interest. Specifically, the Agriculture Minister may give a certificate if disclosure of the information would:

(a) prejudice the security, defence or international relations of the Commonwealth
(b) prejudice negotiations relating to a treaty or other international agreement
(c) be contrary to a treaty or other international agreement to which Australia is a party
(d) prejudice relations between the Commonwealth and a state or territory
(e) involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet
(f) involve the disclosure of deliberations or advice of the Executive Council
(g) prejudice the prevention, investigation or prosecution of an offence against any law
(h) prejudice the prevention or investigation of, or the conduct of proceedings for recovery of civil penalties for, a contravention of any law
(i) be contrary to an order of a court or tribunal
(j) be contrary to the public interest for any other reason that could form the basis for a claim in a judicial proceeding that information relating to the matter should not be disclosed or documents relating to the matter should not be produced
(k) endanger the safety of any person, or
(l) prejudice the revenue of the Commonwealth.

A certificate may be expressed to have effect for the purposes of either or both of the Inspector-General’s information gathering powers under Division 2 of Part 3, or the Inspector-General’s reporting obligations under Part 4 or clause 47. However, a certificate that is based on information that would prejudice the revenue of the Commonwealth must only be expressed to have effect for the purposes of the Inspector-General’s reporting obligations.

While a certificate that is expressed to have effect for the purposes of the Inspector-General’s information gathering powers under Division 2 of Part 3 is in force, a person must not be required under clause 10 to give information, produce documents or answer questions relation to the matter specified in the certificate. Any request made under clause 10 prior to the certificate being given ceases to have effect, so far as it relates to the matter specified in the certificate.

While a certificate that is expressed to have effect for the purposes of the Inspector-General’s reporting obligations under Part 4 or clause 47 is in force, information relating to the matter specified in the certificate must not be included in a report on a review.
The restriction on disclosure of information that could prejudice the revenue of the Commonwealth is only relevant to the Inspector-General’s public reporting function and would apply if, for example, a review by the Inspector-General were to disclose a serious ‘loophole’ in the biosecurity laws, disclosure of which could potentially lead to widespread non-compliance with the Biosecurity Bill.

Clause 62 Annual Report
This clause provides that the Inspector-General must, as soon as practicable after the end of each financial year, prepare and give to the Agriculture Minister a report, for presentation to the Parliament, on the operations of the Inspector-General during the year. Section 34C of the *Acts Interpretation Act 1901* contains rules in relation to annual reports which also must be met. The Inspector-General must include in the report:

- details of any directions given by the Agriculture Minister under subclause 8(2) during the year (that is a direction that the Inspector-General undertake a review)
- details of any action taken, or proposed to be taken, by the Director of Biosecurity since the last report made under this clause in response to the findings and any recommendations set out in a report made by the Inspector-General under clause 37 or 47, and
- the number of reviews of the process for conducting a BIRA carried out during the year.

Subclause (3) further provides that clauses 38, 39, 40 and 61 of the Bill apply in relation to a report required to be prepared under this clause as if it were a report on a review.

Clause 63 Delegation
This clause provides that the Inspector-General may, in writing, delegate all or any of his or her functions and powers under the Bill to a member of staff. This provides the Inspector-General with flexibility to determine the structure and staffing profile of the office and it would not be appropriate to bind the Inspector-General to a particular hierarchical structure in the exercise of the delegation power.

However the Inspector-General may only delegate his or her functions and powers under clauses 10, 20, 34 and 35 to a member of staff who is an SES employee or an acting SES employee who is a member of staff. In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Inspector-General.

Clause 64 Secrecy
This clause protects the secrecy of documents and information provided to, obtained by or made by the Inspector-General, a member of staff or a consultant. This is important given the ability of the Inspector-General, or a person assisting the Inspector-General, to enter premises and gather information or documents relevant to a review. In this clause the following definitions apply:

*court*
This definition provides that ‘court’ includes any tribunal, authority or person having power to require the production of document or the answering of questions.

*produce*
This definition provides that ‘produce’ includes permit access to.
protected document
This definition provides that a ‘protected document’ is a document that is obtained or made by a person in the course of, or as a result of, performing functions or exercising powers under the Bill.

protected information
This definition provides that ‘protected information’ means information that is disclosed to, or obtained by, a person in the course of, or as a result of, performing functions or exercising powers under the Bill.

Subclause (1) provides that a person who is, or was, the Inspector-General, a member of staff, or a consultant engaged under clause 59, must not:

• make a record of protected information, or of all or part of a protected document, or
• directly or indirectly disclose protected information, or all or part of a protected document, to another person (other than the person to whom the information or document relates) or to a court,
if in doing so, the person is not acting in the course of performing functions or exercising powers under, or in relation to, the Bill.

This means that a person can make a record of or disclose protected information or all or part of a protected document where the person is acting in the course of performing duties or exercising powers under the Bill. Additionally, subclause (1) does not apply if the person is authorised to make the record or disclosure pursuant to subclause (3). To rely on this exception, the person bears the evidential burden, which means that the person must adduce evidence which points to the fact that he or she was authorised to make the record or disclosure. It will then be up to the prosecution to establish that this exception does not apply.

Subclause (3) provides that if the Inspector-General has reasonable grounds to believe that making a record or a disclosure is necessary for the purpose of preserving the safety of any person, the Inspector-General may:

• make a record of protected information, or of all or part of a protected document
• disclose protected information, or all or part of a protected document, to another person or to a court, or
• authorise a member of staff or a consultant engaged under clause 59 to:
  − make a record of protected information, or of all or part of a protected document,
  − disclose protected information, or all or part of a protected document, to another person or to a court.

A person commits an offence and is liable to a civil penalty if the person contravenes subclause (1). The maximum penalty for contravention of subclause (1) is two years imprisonment or a fine of 120 penalty units or both. The maximum civil penalty for contravention of subclause (1) is 200 penalty units.

Subclause (6) provides that except where it is necessary to do so for the purpose of carrying into effect the provisions of the Bill, a person to whom this clause applies is not to be required to disclose protected information to a court or to produce all or part of a protected document to a court.
Clause 65  
**Application of the Biosecurity Act**
This clause provides that Parts 1 and 5 of Chapter 11 of the Biosecurity Act have effect in relation to a civil penalty provision of this Bill as if those provisions were a civil penalty provision of the Biosecurity Act. Part 1 of Chapter 11 contains various provisions relating to civil penalty provisions, including, processes for obtaining a civil penalty order and other enforcement action during and following civil proceedings. Part 5 of Chapter 11 applies to provide clarity where a clause states that a person is liable to a civil penalty if the person contravenes another provision of the Bill.

The effect of this clause is to apply Parts 1 and 5 of Chapter 11 of the Biosecurity Act to the civil penalty provisions of this Bill in the same manner for civil penalty provisions in the Biosecurity Act. Part 5 of Chapter 11 of the Biosecurity Act also applies to clause 64 (secrecy) of the Bill as if that clause were a provision of the Biosecurity Act. This is to clarify that the physical elements of the offence and civil penalty in clause 64 are outlined in a different subclause to the subclause which contains the offence or the civil penalty.

Clause 66  
**Protection from civil proceedings**
This clause provides that civil proceedings do not lie against the Commonwealth, the Inspector-General or a member of staff in relation to anything done or omitted to be done in good faith:
- by the Inspector-General or a member of staff in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred by this bill or
- by a person providing or purporting to provide assistance to the Inspector-General or a member of staff (as a result of a request or direction made by the Inspector-General or a member of staff) in the performance or purported performance of a function, or the exercise or purported exercise of a power conferred by the Bill.

Additionally, civil proceedings do not lie against a person in relation to anything done, or omitted to be done, in good faith by the person in providing or purporting to provide assistance to the Inspector-General or a member of staff (as a result of a request or direction made by the Inspector-General or a member of staff) in the performance or purported performance of a function, or the exercise or purported exercise of a power conferred by the Bill.

It is important to note that the protection only applies to acts that constitute a valid exercise of powers conferred under this Bill and that such acts must have been done in good faith. This clause does not, for example, protect the Inspector-General or a member of staff from reviews under administrative law, nor does it protect the Inspector-General or a member of staff from criminal liability, including where such liability arises for failure to comply with provisions of this Bill such as the secrecy requirements in clause 64.

Clause 67  
**Regulations**
This clause allows the Governor-General to make regulations prescribing matters required or permitted by the Bill to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Bill.
Executive summary
Biosecurity involves ‘managing risks where there is a likelihood of a disease or pest entering Australia and establishing itself or spreading and potentially causing harm to human, animal, or plant health, the environment; or causing economic consequences’.

Managing the entry, establishment and spread of pests and diseases is vital, not only for the wellbeing of Australia’s population and native environment but also for the viability of some of Australia’s most important sectors.

In Australia, the management of biosecurity is achieved through collaboration between the Australian, state and territory governments, industry participants and other stakeholders. The Department of Agriculture, Fisheries and Forestry (DAFF) is the primary biosecurity agency at the national level. The Quarantine Act 1908 (‘the Quarantine Act’) provides the legislative basis for human, plant and animal quarantine activities in Australia and provides a national approach to protecting Australia from pests and diseases.

Biosecurity risks have changed significantly since the core of the Quarantine Act was drafted over a century ago. In addition, the last significant review of the system in 2008, One Biosecurity: A Working Partnership found that, while Australia operates a good biosecurity system, there are a number of opportunities for improvement.

In this context, the Australian Government has committed to reform its biosecurity legislation, and to address issues with – and replace – the Quarantine Act and its associated instruments. The proposed biosecurity legislation aims to manage biosecurity risks but in a more flexible manner than the current legislation.

The proposed legislation provides an overarching legislative framework. Much of this framework is common, in practical terms, to the existing situation or provides heads of power for more detailed regulations, and in isolation does not represent substantive change from current policy or practice. This Regulatory Impact Statement (RIS) is focussed on only those parts of the proposed legislation that could be expected to generate substantive costs or benefits for stakeholders relative to the current legislation.

Three specific issues have been identified for analysis in this RIS and relate to:

- approved arrangements between government and industry participants
- introduction of a new policy for the approval of first points of entry
- use of biosecurity zones in prevention and control.

This RIS considers each of these issues in terms of the problem being addressed, potential alternatives to the proposed biosecurity legislation, and the associated costs and benefits. There is also a brief discussion of other changes with less significant impacts (such as those relating to human health).

In addition to the benefits associated with reforms in the three areas outlined above, there is also a broad, unquantified benefit of the proposed biosecurity legislation that relates to the value of improving the overall quality of the legislative framework by reducing the costs.

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1 Draft Biosecurity Bill, section PM50
associated with interpreting complex, prescriptive, outdated legislation (a benefit to both government and business). The legislative reform will also assist the plans for broader reform in biosecurity primarily in the form of more flexible legislative mechanisms that will allow change.

**Approved arrangements**

The Quarantine Act states that quarantine related activities must be performed by DAFF officers or under their direct supervision. This has led to the department implementing partnership arrangements with industry participants that are formalised through various provisions of the Quarantine Act. In particular, section 46A of the Quarantine Act is used where arrangements apply to a physical premise whilst section 66B is used where the arrangement applies to a specific quarantine activity performed on behalf of DAFF. Under section 46A and 66B each premise or activity is subject to a separate approval or agreement.

As a result of the current legislative requirement, industry participants may be subject to multiple arrangements under one or both of the existing sections to ensure they are compliant. This leads to an increased regulatory burden on industry participants, and imposes a significant administrative burden on the department as well as creating inefficiency and duplication of process. More broadly, the current arrangements are seen as unduly restrictive and rigid, with insufficient flexibility to allow for partnerships between industry participants and government in respect of certain activities or types of premises.

The proposed biosecurity legislation will transition those that are currently on a QAP or compliance agreement to an approved arrangement, and broaden the scope of operations that may be brought under an approved arrangement. The model of approved arrangements, within the context of the proposed biosecurity legislation, provides a mechanism whereby government and industry participants are able to work together to achieve biosecurity objectives. These arrangements are most beneficial when they are focused on areas where industry participants have an advantage over government in providing a particular service or facility (such as on the basis of efficiency or technical expertise). In these cases, having industry participants provide a service can allow a more flexible and expedient process to occur, which has benefits to both industry participants and government (for example, where industry participants are able to include particular biosecurity requirements within their usual business process, thereby avoiding the need to defer to biosecurity officials at that stage).

There are three areas identified in this analysis where the proposed changes to approved arrangements are likely to have an impact (in terms of both costs and benefits to both industry participants and government).

- **Broadening the scope and flexibility of approved arrangements between government and industry participants** — Where the changes influence the number and type of approved arrangements sought by industry participants with government. It is expected that in time, there would be an increase in the number of arrangements agreed between industry participants and government, primarily on the basis of the improved flexibility under the proposal, and the inclusion of ‘end-to-end’ systems within the proposed scope of approved arrangements. The increased number of parties subject to approved arrangements will allow for increased flexibility for those parties, providing more effective and efficient outcomes.

- **Reducing administrative complexity for government and industry participants** — Where the changes allow approved arrangements to be established and managed at
a lower administrative cost than previously. It is expected that government and industry participants will benefit from reduced administrative costs, where the new arrangements allow a much more flexible approach to management.

- **Costs to transition to approved arrangements** – most notably in relation to the fit and proper person test.

**First points of entry**
The Quarantine Act provides that overseas vessels must enter Australia at a first port of entry, as listed in the *Quarantine Proclamation 1998*. While the *Quarantine Proclamation 1998* lists the 59 ports that are currently proclaimed as first ports of entry:

- there is no transparent process that sets out how ports come to be proclaimed, nor how ports may be removed from this list
- there are no requirements setting out how to identify suitable first ports (and associated infrastructure requirements) to ensure that the port can be serviced by biosecurity officials or that biosecurity risks can be managed
- there is little clarity around what area constitutes a port in terms of the geographical boundaries of a port (this is important when determining biosecurity risk).

A number of proclaimed first points of entry are no longer receiving a substantive volume of international vessels (for a variety of reasons). Some are not in use at all.

The current ambiguity surrounding the proclamation and management of first ports of entry has led to a number of vessels entering non-proclaimed ports (both with permission – which imposes a range of costs to process numerous ‘one off’ applications, and without permission – which raises concerns around the effective management of biosecurity risks).

The proposed biosecurity legislation will introduce clear requirements to provide certainty to port and landing place operators about the process to become a first point of entry, and the circumstances under which a first point of entry determination may be varied or revoked.

Port operators would be positively impacted by the greater transparency and certainty within the first point of entry process. In addition, the decision to apply for first point of entry status lies with port operators and enables operators to choose the option that best aligns with their business objectives. Costs include application costs as well as potential costs to upgrade facilities to meet specific requirements that would be set out in regulations. Some may choose to forego their first point of entry status, with potential impacts on profitability and port users.

DAFF would benefit from the proposed arrangements because the legislation will enable requirements for facilities for biosecurity officers to be set out in regulations. It would thereby help to ensure that officers have the necessary tools and facilities available to them at each port to carry out specific biosecurity duties relevant for that port.

Vessel masters would be able to work within a superior framework, resulting in greater transparency of port requirements, potentially fewer applications to land at non-proclaimed ports and greater flexibility to manage short term or seasonal use of ports. Vessel masters would also have greater certainty about the facilities available to them upon arriving at a first point of entry.
Declaration of biosecurity zones
The Australian Government currently assumes a relatively narrow biosecurity reach even though its constitutional powers allow for broader regulation. Specifically, the Australian Government has not yet exercised its absolute constitutional power but rather has focused on regulating border activities. Onshore activities have generally been the responsibility of state and territory governments, with assistance from the Australian Government in particular instances.

This relatively narrow focus has caused a range of issues, including:
- additional, and sometimes overlapping, biosecurity measures imposed by individual states and territories
- the non-traceability of animal and plant matter of greater biosecurity interest once it passes the border
- inefficient strategies and actions due to the uncertain roles and responsibilities of both individual states and territories and the Australian Government
- inadequate information sharing and coordination between governments.

The proposed biosecurity legislation provides additional powers to the Australian Government to manage biosecurity risks post-border. These powers include: biosecurity response zones, biosecurity zones, monitoring zones and biosecurity control orders. The potential impact of these changes on industry participants, and the community more broadly depend on:
- the extent to which they impose costs on business or individuals by restricting their normal operations (i.e. restricting access to property, restricting movement of people, vehicles or goods, requiring monitoring activities)
- the extent to which the new arrangements will improve the management of biosecurity risks, including reducing the potential spread of an introduced species or disease
- the frequency with which the measures are used.

These powers complement rather than replace existing state powers. They may be used infrequently but provide a greater number of options for managing post border incursions in a timely and effective way, particularly if there are benefits in managing a response consistently across different jurisdictions.

The extent of costs and benefits from these powers will vary considerably from case to case, depending on how they are applied. The key benefit of these changes will be improved management of incidents post-border and the resulting reduction in costs to stakeholders who could be affected if the pest/disease spread further. The costs associated with these powers will primarily be incurred by those industry participants within a declared zone or affected by a notice which may include costs of restrictions to movement of persons, livestock or goods, costs of providing access to property for monitoring. Importantly, these costs would be similar to those incurred when existing powers are exercised by state and territories. The additional cost of sometimes using these powers is likely to be small and in some cases could result in cost savings relative to the alternative of managing a response using different powers in each state.

Conclusion
In most cases, the proposed biosecurity legislation provides the enabling powers for government, with additional details to be set in regulations. While key areas of costs and
benefits can be identified, an estimate of the scale of costs and benefits cannot be provided in most cases without the detail that would be set in regulations. For instance, the potential compliance costs of meeting requirements for first points of entry would be determined based on the criteria and application process to be set in regulations. The impact analysis is, therefore, primarily qualitative. In that regard, the overall assessment is that the proposed biosecurity legislation is likely to generate a net benefit relative to the status quo, and is recommended for adoption.

**Introduction and context**

Biosecurity involves ‘managing risks where there is a likelihood of a disease or pest entering Australia and establishing itself or spreading and potentially causing harm to human, animal, or plant health, the environment; or causing economic consequences.”

A number of factors mean that Australia is increasingly vulnerable to pests and diseases which threaten its biosecurity status. These include the increasing numbers of vessels, passengers and goods from higher risk origins entering Australia and the changing nature of trade and movement with a higher percentage arriving from higher risk countries. The work related to managing the associated biosecurity risks is expected to double in the next 10 years.

The number of incursions of pests and diseases is increasing and there are also increasing demand from international trading partners for greater levels of assurance in relation to exports.

If the existing approach to managing Australia’s biosecurity system does not change, funding of the biosecurity system will need to grow proportionately with the increases in movements of vessels, people and goods to achieve the same level of biosecurity activity. It is questionable whether such an ongoing cost increase is sustainable.

The existing approach to funding and targeting resources is unsustainable if Australia is to maintain its favourable biosecurity status. Australia, particularly its agriculture, fisheries, forestry and food industries, gains significant economic benefits from this status which would be adversely affected if it was not maintained. Breaches of the biosecurity system can also have significant implications for human health and biodiversity.

The following sections provide an overview of recent events that provide an important context to the problems identified with the current legislation.

**The current situation**

Australia remains relatively free from many of the pests and diseases that affect primary industries, the environment and human health in other countries. However, in recent years Australia’s borders have become increasingly vulnerable to pests and diseases. Australia’s increased vulnerability is due to a number of factors including globalisation and the increased movement of goods and people across borders.

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2 Draft Biosecurity Bill, section PM50
3 Based on Department of Agriculture, Fisheries and Forestry information.
Australia’s favourable pest and disease status is important as it underpins Australia’s agricultural and food sector and its ability to export and is integral to the unique status of Australia’s natural environment. One indicator of the economic benefit to Australia is the contribution of Australia’s agriculture, fisheries and forestry industries to gross domestic product (GDP). In 2010-11 these industries contributed $36.2 billion in exports (or 3 per cent of GDP).

The Department of Agriculture, Fisheries and Forestry (the Department) has primary responsibility for managing Australia’s biosecurity system. In 2011-12, total funding for the Department’s biosecurity programs is estimated at $509.5 million; the majority of which is comprised of $186 million from government appropriation and $295 million from external revenues.

The need for new biosecurity legislation
There are various reasons that have been identified for a shift in the approach of managing biosecurity. These are:

- the existing primary focus on interception at the border is a narrow and resource intensive response to the biosecurity continuum
- resources are allocated inefficiently to address different risks
- several key components of the biosecurity system at that time were identified as inadequate, inefficient or ineffective.

The nature of biosecurity risks in Australia
Biosecurity risks have the potential to impose significant costs on Australian firms, government and individuals if they are not managed effectively.

One example of this is the discovery of red imported fire ants (non native species) in Queensland. The Australian Bureau of Agricultural and Resource Economics estimated the potential costs of this pest to Australia over a 30 year period to be nearly $9 billion. Currently, under emergency response arrangements (these include the Emergency Animal Disease Response Agreement, the Emergency Plant Pest Response Deed and the draft National Environmental Biosecurity Response Agreement.), the Australian Government is contributing to pest and disease eradication and other management programs at a cost of over $315 million; of which the Australian Government has or is committed to contribute half of all government costs.

In the case of Foot and Mouth Disease, the recent Matthew’s review commissioned the Australian Bureau of Agricultural and Resource Economics and Sciences to revisit the Productivity Commission’s 2002 report on the economic impact of hypothetical foot and mouth disease outbreaks on Australia.

The Australian Bureau of Agricultural and Resource Economics and Sciences estimated that over a ten year period there would be severe direct economic losses to the livestock and meat

processing sector from an outbreak of foot and mouth disease. These losses ranged from $7.1 billion for a small three month outbreak, to $16.0 billion for a large 12 month outbreak (expressed in current dollar terms). Control and compensation costs were estimated to range between $25 million for the small outbreak, and $600 million for the large outbreak. Reflecting international experience, the economic impact of trade restrictions (export market closures) would be far greater than the cost of controlling the disease.

The Beale Review and, prior to that, the Nairn Review were significant investigations into Australia’s current biosecurity management framework and the current level of biosecurity risk Australia faces. These reports illustrate the nature of biosecurity risks to Australia, the potentially severe consequences should an incursion occur, as well as the need for government intervention. Therefore, this Regulatory Impact Statement (RIS) does not ‘re-prosecute’ the need for quarantine activities at Australia’s border from first principles in extensive detail.

The role for government in mitigating biosecurity risks

Government intervention or action is typically justified in instances of market ‘failure’. In this case, to take one example, the presence of negative externalities (a form of market failure where one party imposes costs on others that are not compensated or benefits that are not paid for) in the context of biosecurity has been widely documented.

For example, the importer of a good containing a pest or disease does not usually bear the full costs of any resultant pest or disease outbreak. Rather, pests and diseases affect other producers through a loss of production and/or additional costs associated with the control of the pest and disease and consumers through the potential increase in price for affected goods or the unavailability of the affected good.

After completing research and assessing the impacts of invasions, Perrings, Dehnen, Touza, & Williamson (2005) state that “responsibility for environmental protection lies with national governments and takes the form of quarantine regulations.” Further “one of the most striking consequences of globalisation is the increase in the problem of invasive species” and subsequently invasion costs, indicating the growing need for government intervention.  

In Australia, the management of biosecurity is achieved through collaboration between the Australian, state and territory governments and other stakeholders. DAFF is the primary biosecurity agency; however there are a number of other Australian government agencies with responsibilities for border security and which participate in biosecurity decision making. Examples of these agencies include:

- the Department of Health and Ageing (DoHA) collaborates with state and territory government health agencies and other relevant agencies to develop, maintain and provide direction for human health issues and strict human quarantine policies to protect Australia from the introduction of serious communicable diseases
- the Department of Sustainability, Environment, Water, Population and Communities (DSEWPC) is involved in respect of matters about pests that affect

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Australia’s unique environment and to ensure a strategic, effective and consistent approach is used to manage environmental threats

- the Australian Customs and Border Protection Service (Customs) has shared responsibility with DAFF to regulate and control movement into and out of Australia of people, cargo and vessels at airports, sea ports and mail centres
- the Department of Immigration and Citizenship (DIAC) manages the entry of travellers.

In addition, state and territory governments have an integral involvement in managing and implementing onshore biosecurity activities.\(^{10}\)

The core priority for DAFF in managing biosecurity risks is to focus resources on those areas of greatest risk and where government intervention is most needed.\(^{11}\) Priorities also include:

- the continued partnerships between Australian departments, state and territory governments, industry participants, clients and stakeholders
- the delivery of biosecurity services to support access to overseas markets and protect the economy and the environment from the impacts of unwanted pests and diseases.

Australia focuses heavily on maintaining its biosecurity system across the continuum, applying measures to identify hazards and manage risks through preparedness, prevention, response and recovery strategies.\(^{12}\) This focus on the continuum supports consistent service delivery, provides effective biosecurity risk management, improves the efficiency and responsiveness of operations, and strengthens client relationships.

Biosecurity risks have changed significantly since the core of the Quarantine Act was drafted over a century ago. Figure 1 below sets out some activities currently undertaken at the key points along the biosecurity continuum.

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Currently the Australian Government predominantly focuses its resources on ‘at the border’ activities. It also conducts some offshore activities, while the responsibility of onshore activities generally rests with state and territory agencies.

Industry participants are able to participate in the management of biosecurity risks through the implementation of a partnership arrangement between DAFF and the industry participant whereby industry participants agree to meet biosecurity standards and/or perform a range of biosecurity functions. These are formalised through provisions under the Quarantine Act.

**Problems associated with current legislation**

There are several problems associated with the current legislation. It is not aligned to modern business realities, has been amended approximately 50 times resulting in poorly integrated provisions and is marked by inconsistent use of language, poor structure, a range of drafting styles and duplication or overlap of powers.

Specific problems that have been identified and which are the focus of this RIS, are:

- the need for greater shared responsibility between the Australian, state and territory governments, and between government, business and community
- poorly specified obligations related to first points of entry
- insufficient powers to achieve biosecurity objectives.

**Objectives and options to achieve them**

**Government objectives**

The objectives of government action to address the problems evident in existing biosecurity legislation are to:

- manage Australian biosecurity risks to an acceptable level and subsequently manage the impact associated with biosecurity incidents (such as the introduction of pests and diseases into Australia)
- maximise the economic efficiency of the management of biosecurity risks.
Options to achieve objectives
This chapter sets out, at a high level, a range of options for meeting the government’s objectives from no regulation through to the proposed biosecurity legislation. These are considered in more detail in the chapters that follow in relation to the specific areas that are the focus of this RIS. Components of the legislation that are not specifically considered in this RIS are also set out in Table 1, setting out the extent of any change to the relevant legislative arrangements and any impacts on stakeholders (if any).

The current legislation
The status quo involves maintaining the current regulatory approach, which is the Quarantine Act and associated subordinate instruments. For the purposes of analysis for this RIS, the status quo is assumed to maintain:
- the current approach to articulating the Acceptable Level of Protection
- the current approach to Import Risk Assessments and associated risk determinations
- industry participants partnership arrangements as administered under two separate sections in the Quarantine Act (sections 46A and 66B)
- the current approach to designating first ports of entry, whereby overseas vessels must enter Australia at a first port of entry proclaimed under the Quarantine Act
- the current governance arrangements
- the current cost recovery arrangements
- limited powers in post-border space
- a rigid enforcement regime with only the ability to undertake criminal prosecution.

The proposed biosecurity legislation
The proposed biosecurity legislation will replace the century old Quarantine Act and aims to create a responsive and flexible operating environment. The reforms will allow for better management of the risks of animal and plant pests and diseases entering, establishing and spreading in Australia and potentially causing harm to people, the environment and the economy.

The proposed biosecurity legislation comprises two new bills; the Biosecurity Bill and the Inspector General of Biosecurity Bill. The Biosecurity bill consists of the following chapters:

Chapter 1 – Preliminary: This chapter sets out a number of administrative matters and includes commencement, the objects of the Act, Australia’s appropriate level of protection, binding of the Crown, geographical coverage, as well as how the Act will interact with state and territory laws.

Chapter 2 – Managing biosecurity risks: human health: This chapter covers the continued management of human health risks at Australia’s borders. It outlines the measures which may be used to respond to the threat of serious communicable diseases.

Chapter 3 – Managing biosecurity risks: goods: This chapter provides for the powers of biosecurity officers to evaluate the potential risks associated with the import or proposed import of goods, prohibit or conditionally allow goods to be imported into Australia and to manage risks associated with goods brought into Australia.

Chapter 4 – Managing biosecurity risks: conveyances: This chapter outlines the establishment and management of first points of entry and the management of biosecurity risks associated with conveyances (vessels, aircraft, etc) entering into Australia’s jurisdiction from overseas and with offshore installations.

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Chapter 5 – Ballast water and sediment: This chapter implements the International Convention for the Control and Management of Ships’ Ballast Water and Sediments 2004 and creates a single, Australian-wide ballast water and sediment management regime.

Chapter 6 – Managing biosecurity risks: monitoring, control and response: This chapter outlines powers to monitor and, where necessary, manage biosecurity risks when they emerge on-shore.

Chapter 7 – Approved Arrangements: This chapter outlines the scope and principles of approved arrangements, the processes for application, approval and any subsequent changes to an arrangement with a biosecurity industry participant.

Chapter 8 – Biosecurity emergencies and humans biosecurity emergencies: This chapter outlines the powers and provisions relating to the declaration of a state of biosecurity emergency and the management of associated biosecurity risks.

Chapter 9 – Compliance: This chapter establishes the monitoring, investigation and audit provisions under the Bill.

Chapter 10 – Warrants: This chapter contains general provisions relating to the various types of warrants that may be issued under the Bill.

Chapter 11 – Enforcement: This chapter provides a modern regime of enforcement tools to respond to non-compliance including civil penalties and criminal offences as well as a range of administrative options such as an infringement notice scheme, enforceable undertakings and identity provisions.

Chapter 12 – Governance and officials: This chapter makes clear the powers and responsibilities of the Director of Biosecurity, the Director of Human Biosecurity, and biosecurity officers, biosecurity enforcement officers, chief human biosecurity officers and human biosecurity officers.

Chapter 13 – Miscellaneous: This chapter contains provisions on recovery of costs and protection from civil proceeding while also covering other provisions that do not fit under any of the other chapters.

In comparison to the current situation, Table 1 below describes the differences of the proposed biosecurity legislation as well as comments on the extent of impacts on stakeholders. This Regulation Impact Statement focuses on those areas that represent the most significant changes (and therefore impacts) for stakeholders (as discussed below).
Table 1: Comparison between Quarantine Act and the current situation

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Compared to current legislation</th>
<th>Outcome and impact</th>
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</thead>
<tbody>
<tr>
<td>1. Preliminary</td>
<td>Outlines constitutional heads of power. The Commonwealth will cover the field in relation to importation of goods into Australia. Australia’s Appropriate Level of Protection will be enshrined in the new legislation.</td>
<td>These changes provide clarity around heads of power but this does not have tangible implications for stakeholders. The risk of inconsistent import conditions imposed by States and Territories where they are inconsistent with Commonwealth laws will be reduced but in practice, inconsistent conditions can already be challenged because of Australia’s obligations under World Trade and Free Trade agreements. Australia’s Appropriate Level of Protection is already Government policy and in operation it will not be any different if it is included in legislation. In isolation, these changes are not expected to result in substantive impacts on stakeholders.</td>
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<td>2. Managing biosecurity risks: human health</td>
<td>More powers to manage human biosecurity risks. Interventions tailored to accommodate an individual’s circumstances.</td>
<td>Consultation on the draft RIS revealed that the impact of these changes will be minor as there will be little practical change to current procedures despite greater clarity and flexibility in the legislation. Further, only a small number of people are likely to be affected. For example, the changes do not affect the list of human diseases for which interventions are applied.</td>
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<tr>
<td>3. Managing biosecurity risks: goods</td>
<td>Goods can be unloaded unless directed not to unload. Reversal of onus of proof for illegally imported goods. Abandoned or forfeited goods will be able to be destroyed, sold, exported or otherwise disposed of.</td>
<td>DAFF operations staff have advised that in practice, the direction not to unload will not impact current loading/unloading practices. The reversal of onus of proof will transfer the evidence burden from Government to importers – overall it is expected it will be easier and less resource intensive for an importer to prove goods were imported legally than for Government to prove the reverse. This change may affect the outcomes of individual prosecutions. Flexibility to manage abandoned goods would provide benefits to government eg. in reduced storage and administrative costs but the quantum of benefits is expected to be minor. These changes were not subject to more detailed analysis because of their relatively minor overall impact.</td>
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<td>4. Managing biosecurity risks: conveyances</td>
<td>Greater transparency around first points of entry. Vessel sanitation certification scheme.</td>
<td>The changes to first points of entry represent a substantive change to existing policy and will impact existing first points of entry and potential new first points of entry. Although the extent of impacts will depend on the detail in the regulations, some analysis of the high level impacts on stakeholders has been undertaken. Consultation revealed that the vessel sanitation certification scheme will not materially impact existing processes as these certificates are, in practice, already recognised.</td>
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<tr>
<td>5. Ballast water and sediment</td>
<td>Manage ballast water via exchange or treatment systems.</td>
<td>The ballast water changes reflect an international convention that will come into</td>
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<tr>
<td>6. Managing biosecurity risks: monitoring, control and response</td>
<td>New post border powers. Information gathering powers. Biosecurity control orders. Biosecurity zones.</td>
<td>These measures give the Commonwealth additional powers for managing biosecurity risks post border. Most states and territories already have similar powers. In practice, use of Commonwealth state or territory powers will be coordinated under existing national agreements. Some analysis of possible impacts is included in the RIS.</td>
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<td>7. Approved arrangements</td>
<td>Improve approved arrangements with industry to cover: Broader range of operations. Less administration costs for industry and government in managing Approved Arrangements. Ability to vary, suspend or revoke an Approved Arrangements.</td>
<td>These measures will provide greater flexibility for industry to manage the biosecurity risks associated with their operations. In practice, this is likely to have the greatest benefits for large importers. Arrangements for smaller operators are unlikely to change significantly. The potential impacts are analysed in this RIS.</td>
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<td>8. Biosecurity emergencies and humans</td>
<td>Broadsens the scope of the powers to cover: Threats to human, plant and animal health. The environment. The economy.</td>
<td>These provisions are similar to existing powers in the Quarantine Act that have never been invoked but are broadened to include acting when there are potential impacts on the environment or economy. The powers are designed to manage serious situations and those that are not able to be anticipated. Given the similarities to existing powers and that they may never be invoked, it is not possible to predict substantive impacts on stakeholders and these have not been analysed.</td>
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<tr>
<td>9. Compliance</td>
<td>Establishes the monitoring, investigation and audit provisions under the Bill. Allows the Director of Biosecurity or Director of Human Biosecurity to assess whether a person is fit and proper in relation to applications for things such as import permits or approved arrangements, and also allows the Director of Biosecurity to require personal information for applications.</td>
<td>These provisions outline the monitoring, investigation and audit powers for ensuring compliance with the Bill, and are similar to existing provisions in the Quarantine Act. The introduction of a fit and proper person test, in conjunction with the power to require personal information for applications, is envisaged to increase the efficiency of the process by allowing the review of a complete application without needing to seek additional information. These requirements are designed to protect the integrity of the application process for importers and other stakeholders. In addition, the requirements assist in the management of biosecurity risk by ensuring that privileges such as import permits or approved arrangements are given only to those able to responsibly and appropriately handle them.</td>
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<td>10. Warrants</td>
<td>Contains general provisions relating to the various types of warrants that may be issued under the Bill. Allows for entry to premises and</td>
<td>The warrant provisions will allow for appropriate officials to enter premises or exercise other specific powers for ensuring compliance with the Bill, or managing biosecurity risk. These provisions provide</td>
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<tr>
<td>12. Governance and Officials</td>
<td>General administration power for Director of Biosecurity to provide transparency, certainty and consistency on how the legislation will be applied.</td>
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<tr>
<td>13. Miscellaneous</td>
<td>Increased ability to deny/stop services where fees are outstanding. Reporting timeframes. Protection from civil proceedings for officers performing functions under the Act.</td>
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</table>

The taking of possession of conveyances or premises by consent, with a warrant, or in certain circumstances without a warrant or consent.

for warrants to be issued and exercised in accordance with the Bill in circumstances that are consistent with the Australian Government Commonwealth Guide to Framing Offences, Infringement Notices and Enforcement Powers. It is not envisaged that in practice there will be a high number of warrants issued each year.

The introduction of a civil penalty regime in addition to existing criminal offences provides the department with greater opportunity to take action where non-compliance has been identified. This will provide more flexibility than criminal sanctions alone to encourage behavioural change. The changes are consistent with normal practice in other sectors and are briefly outlined in this RIS.

This additional power will provide greater administrative transparency. It does not allow the Director to ‘reinterpret’ legislation but may provide some benefit for stakeholders where there is uncertainty. The impacts for stakeholders will depend on the aspect of legislation being interpreted and the outcome and analysis of possible impacts would be speculative.

These provisions are administrative in nature and details, particularly in relation to cost recovery, will be provided in regulations. The department may benefit from the increased incentive for service users to pay fees. The reporting timeframes are not substantially different to existing timeframes. The protection of officers performing functions under the Act is consistent with current practice. Possible impacts of these provisions are not analysed in this RIS.

An interim Inspector-General has already been appointed and the incremental cost of establishing the office in legislation is therefore expected to be minimal. However, this office is expected to avoid the need for future Beale and Nairn style reviews – avoiding the costs of conducting these reviews would to some extent offset the costs of this office. These impacts are minor in nature and not analysed in detail in this RIS.
No regulation
A 'no regulation' option would involve no biosecurity controls and no measures to mitigate biosecurity risks to Australia. This option was not considered feasible because it does not achieve the objective of seeking to manage biosecurity risks to an acceptable level. It also is not consistent with Australia’s international obligations.

Self regulation
A 'self regulation' option would involve industry participants leading risk mitigation measures and taking responsibility for managing these risks. As self regulation measures can have no legal basis, their success relies on there being sufficient incentive to business to act in a way that mitigates risk (such as potential loss of revenue). These approaches are not effective in cases, such as in managing biosecurity risks, where the potential costs of an incident are high and wide ranging and may not fall on the party primarily responsible for managing those risks, and where it is difficult to identify the party that has not properly managed risks.

Direct supervision by government
Under a direct supervision option government takes full responsibility for biosecurity measures and industry participants have no role in mitigation measures. This approach was not progressed as it is not feasible from a resourcing perspective for governments and is not cost effective. It was also not consistent with the government’s cost recovery policy or with the ‘shared responsibility’ approach as outlined and recommended in both the Nairn and Beale reviews.

Assessing impacts
In developing proposed biosecurity legislation, a number of problems with the existing arrangements are addressed, the most significant of which relate to:

1. Approved arrangements.
2. Management of first points of entry.
3. Biosecurity zones that provide the Australian Government with additional powers to manage biosecurity risks post border.

These areas were considered to impose the most significant impact, in part because some are new provisions, but also because they have the most wide reaching impacts on stakeholders.

A fourth area, ballast water management also involves significant changes, however a RIS on ballast water proposals was prepared in 2007 and the proposals have already been subject to extensive consultation. As the content in that RIS remains current, the changes to ballast water management are not considered in this RIS. The differences between the existing Quarantine Act or the current situation and the proposed legislation are summarised in Table 1. This table provides brief commentary on whether or not these differences are expected to have substantive impacts on stakeholders and therefore whether substantive analysis of the impacts in this RIS was warranted.

Other areas within the new legislation either currently exist under the Quarantine Act 1908 or exist in state and territory legislation.

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In most cases, the proposed biosecurity legislation provides the enabling powers for government, with specific details around implementation and compliance to be set in regulations. While key areas of costs and benefits can be identified, an estimate of the scale of costs and benefits cannot be provided in most cases. For instance, the potential compliance costs of meeting requirements for first points of entry would be determined based on the criteria and application process to be set in regulations. The impact analysis is, therefore, primarily qualitative.

The focus of the analysis is on those elements which represent the most significant change and are considered to have the greatest potential impact on business and consumers. Each of these elements or issues are considered in turn in a thematic manner, that is, the nature of the problem, options and assessment are considered for each issue, before moving onto the next. This approach has been taken to assist the reader in working through one issue before moving onto the complexities of the next. After consideration of the most significant elements, the other less significant aspects of the proposed biosecurity legislation are briefly considered, before the RIS talks about implementation and review.

Approved arrangements

Nature of the problem
Currently the responsibility for protecting Australia’s international borders primarily falls on government, which may increase the risk of ‘moral hazard’. Moral hazard occurs when an individual or organisation is insulated from a risk or does not bear the cost of a risk occurring. Consequently the individual or organisation behaves differently, with a tendency to act less carefully than they otherwise would to mitigate the risk (as they have less incentive to work to reduce the probability of the risk occurring). For example, a vessel’s captain may not adequately ensure the vessel harbours no pests or disease on board before entering Australian waters given the burden of checking the vessel falls on the Australian Government.

This issue with the Quarantine Act was noted in a submission from the Quarantine and Exports Advisory Council to the Beale review, stating:

“The responsibility of managing risk should not be a sole AQIS responsibility but be spread across corporate Australia. There should be a legislative mechanism to ensure corporate Australia and importers take responsibility for managing the risk by ensuring appropriate systems and procedures are in place.”

The burden on government will continue to increase moving forward given the expected increase in the volume of goods, vessels and people coming into and out of Australia. Further, the focus on government can ignore private sector expertise in risk management. The Quarantine Act requires that quarantine related activities are performed by DAFF officers or under their direct supervision. Sections 46A and 66B of the Quarantine Act create an exemption where DAFF can enter into arrangements (partnership arrangements) with industry participants to perform some of these functions themselves.

- Section 46A: allows the Director of Quarantine to approve a premises for the purpose of receiving, storing and dealing with goods subject to quarantine, referred to as a Quarantine Approved Premises (QAP).

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14 Quarantine and Exports Advisory Council submission to the Beale review, p.3.
Section 66B: allows the Director to enter into a Compliance Agreement with an industry participant, which requires the industry participant to perform specific tasks in relation to goods that are subject to quarantine in an agreed manner.

Under section 46A and 66B, each premise or activity is subject to a separate approval or agreement. As a result, industry participants may be subject to multiple arrangements under one or both of the existing sections to ensure they are compliant. This leads to increased regulatory burden on industry participants, and imposes a significant administrative burden on DAFF as well as creating inefficiency and duplication of process. More broadly, the current arrangements are seen as unduly restrictive and rigid, with insufficient flexibility to allow for partnerships between industry participants and government in respect of certain activities or types of premises.

Options to address the problem

No regulation
No government intervention is not considered to be a feasible option as there are strong public interest concerns and potentially high risk events in relation to approved arrangements. The risks should be managed to a specified level for the broad benefit of the community and industry.

Market forces are insufficient incentive for industry participants to appropriately manage biosecurity risks to Australia. They may limit their management activities to identifying and preventing harm to their own business rather than identifying and preventing harm to Australia. Some approved arrangement participants will also lack the expertise required to identify and manage biosecurity risks.

The current legislation
Under current legislation, QAP and compliance agreements are already in place that achieve, to some extent, the benefits of partnerships between industry participants and government. There are a number of aspects of current arrangements however which are not optimal, and therefore do not achieve all of the potential benefits of these types of arrangements.

For instance, under the current legislation, large importers with control of their end to end supply chain processes are not able to take advantage of partnership arrangements with DAFF. As a result, any expertise they might have in managing risks is not utilised, and there may be higher costs to those participants and to government as a result of quarantine related activities being performed by DAFF.

Continuing with the current legislation would lead to the continuation of the above mentioned problems and therefore this is not deemed to be a feasible option for the purposes of this RIS.

The proposed biosecurity legislation
The proposed approved arrangement provisions will allow for:

- consolidation of existing QAPs and compliance agreements into single approved arrangements
- a systems-based approach to managing biosecurity risks that will enable larger end to end importers to participate in an approved arrangement.
Under the proposed biosecurity legislation, the Director of Biosecurity and the Director of Human Biosecurity may, upon the application of a biosecurity industry participant, approve an arrangement for the performance of particular biosecurity functions, or the exercising of particular biosecurity powers to manage biosecurity risks. An arrangement must meet the requirements set out in the regulations. The legislation would be flexible enough to allow the Directors to consider any matter they determine to be relevant when approving an arrangement.

If a Director reasonably believes that due to a change in circumstances an arrangement no longer meets the requirements on which the arrangement was approved (such as a change in the acceptable level of biosecurity risk), the Director may vary the arrangement, or require the biosecurity industry participant to vary the arrangement. Similarly, a biosecurity industry participant can request a variation to the arrangement. If the Director refuses a biosecurity industry participant’s request for a variation, the Director will have to provide the reasons for the refusal.

The Director would also be able to suspend or revoke an approved arrangement. If the Director requires a suspension or revokes an agreement, a show cause notice would be issued first, giving the biosecurity industry participant 14 days to respond. The Director would not be required to issue a show cause notice if the grounds for suspension or revocation are serious or urgent. If a biosecurity industry participant requests a suspension or revocation, the Director would be required to approve the request.

If an approved arrangement has been suspended or revoked by a Director, the Director may require a biosecurity industry participant to take actions to ensure that biosecurity risks are still being adequately managed.

**Direct supervision**

A more prescriptive approach and greater government intervention is not feasible from a resourcing perspective for governments, not cost effective and not consistent with the 'shared responsibility' concept.

**Assessment**

Approved arrangements are most beneficial where industry participants have an advantage over government in providing a particular service or facility (for example, where industry participants are able to include particular biosecurity requirements within their usual business process, thereby avoiding the need to defer to biosecurity officials at that stage). That said, not all organisations will necessarily experience net benefits from moving to approved arrangements, and the voluntary nature of the arrangements will mean that generally only those that received net benefits will transition to this type of arrangement. One submission highlighted that it is likely that small operations may not expect significant benefits from such a shift due to the upfront training and support costs required. The proposed legislation is likely to have an impact (in terms of both costs and benefits to both businesses and government):

- *Broadening the scope and flexibility of approved arrangements between government and business* — where the changes influence the number and type of approved arrangements sought by industry participants with government.
- *Reducing administrative complexity for government and industry participants* — where the changes allow approved arrangements to be established and managed at a lower administrative cost than previously.
impacts associated with transition to approved arrangements - transition of existing agreements to approved arrangements is expected to take place within 18 months of commencement.

Each of these factors is discussed in more detail in the following sections.

Potential costs and benefits for industry participants

Broadening scope and flexibility of approved arrangements between government and businesses

Industry stakeholders’ participation in partnership type agreements is currently voluntary, and would continue to be so under approved arrangements in the proposed biosecurity legislation. Costs associated with these arrangements, therefore, are incurred voluntarily by participants. It is reasonable to assume that industry participants not currently under a partnership type agreement will apply for an approved arrangement with government in cases where they believe that there is a net benefit for them of entering into the arrangement (over a reasonable timeframe for investment).

A key element in the potential change in up-take of approved arrangements is the broadening in scope and flexibility of arrangements that can be agreed under the proposed biosecurity legislation. There are two main implications:

1. There is unlikely to be a significant impact on the scope or scale of businesses currently under QAPs or compliance agreements that have been agreed under the Quarantine Act. Those industry participants who have limited control over the supply chain of the commodity or product they are importing, would transition to an approved arrangement similar to the current model they are using, whether that be the procedural or premises based model.
2. Larger industry participants that control the whole of supply process for their commodity or product may move to an agreement under the new model if it lowers their net costs and they can effectively manage biosecurity risks using their own systems. This would not occur if an industry participant thought that moving to a broader arrangement under the new model would be too costly or not deliver the benefits in the long term to justify the implementation costs.

The net change in the number of partnership type agreements in place would therefore be determined by the extent to which there is growth in the number of industry participants that seek new approved arrangements for their ‘end-to-end’ business process and additional functions. The following information, provided by DAFF, provides a guide on the potential uptake of these new types of approved arrangements for larger industry participants:

- There are currently approximately 1000 industry participants that import what can be classified as ‘large’ quantities. Of these large importers, it is expected that there would be approximately 100 that have the appropriate internal systems in place to satisfy the requirements of an approved arrangement, that is, there are 100 industry participants that would be able to complete an ‘end to end’ risk analysis of their goods.
- It is anticipated that there would be 30-40 of these large industry participants that, already within their business model, satisfy the requirements and would need to

15 Large quantities, based on 2011/2012 departmental statistics, is an importer that has approximately one or more entries per week.
simply put together their risk analysis and business model for DAFF to review. This results in 60-70 importers (that is, the 100 industry participants minus the 30-40 that already satisfy these requirements) who may benefit from implementing an agreement under the new arrangement and who would incur some initial costs to ensure their business model and risk analysis adequately satisfies DAFF’s requirements.

- The importers who are successful would need to undergo audit checks to verify their risk analysis and ensure they are adequately managing their biosecurity risks. It is expected that the majority of these industry participants would have a high degree of exposure to these types of audit processes under current arrangements. Therefore the audit process would most likely not deter these participants and would not affect uptake.

Based on this analysis, it is reasonable to expect that there would be a small increase in the extent of approved arrangements agreed with industry participants under the proposed biosecurity legislation, though the additional agreements would be amongst larger importers and would have broader scope than current arrangements (that is, they would cover more business processes).

**Example of potential benefits from approved arrangements**

To demonstrate the potential benefits due to the proposed approved arrangement framework, the following example provides an illustration of potential benefits for an industry participant that chooses to be brought under the scope of an approved arrangement.

Company A is a major importer of commodity X and has been importing this commodity into Australia for many years without any biosecurity breaches. The company has controls in place across the total supply chain for all products it imports into Australia. The company’s owner is a diligent importer who understands the biosecurity risks associated with the products it imports and its systems are able to provide evidence to support this. On average, the company imports 10,000 containers of this commodity each year. Under current processes, all of these containers must be inspected by biosecurity officers regardless of the company’s compliance history and biosecurity management controls in place.

Under the new approved arrangement framework, the systems that Company A has in place would be recognised by DAFF as appropriate for managing the biosecurity risks associated with the goods the company is importing. Further, the low risk of Commodity X would also be taken into account due to the risk return approach enabled by legislation. Consequently, Company A would experience less intervention from DAFF. Out of the 10 000 containers, a lower percentage would be selected for inspection to provide assurance, or verify, that the company’s arrangements effectively manage risks across the continuum. For this example, Company A’s inspection rate could be reduced to 50 per cent of containers. (Note: this is to illustrate the potential benefit and does not reflect the true reduction for intervention that may be applied by DAFF).
Table 2: Impact on ‘Company A’ each year

<table>
<thead>
<tr>
<th></th>
<th>Current</th>
<th>Future</th>
</tr>
</thead>
<tbody>
<tr>
<td>Container Inspection</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Containers inspected</td>
<td>10 000</td>
<td>5 000(a)</td>
</tr>
<tr>
<td>Time cost/container</td>
<td>60 minutes (b)</td>
<td>60 minutes (b)</td>
</tr>
<tr>
<td>Total time cost</td>
<td>10 000 hours</td>
<td>5 000 hours</td>
</tr>
<tr>
<td>Monetary cost/container</td>
<td>$180(c)</td>
<td>$180(c)</td>
</tr>
<tr>
<td>Total monetary cost</td>
<td>$1 800 000</td>
<td>$900 000</td>
</tr>
<tr>
<td>Potential time saving to Company A</td>
<td></td>
<td>5 000 hours</td>
</tr>
<tr>
<td>Potential cost saving to Company A</td>
<td></td>
<td>$900 000</td>
</tr>
</tbody>
</table>

Source: The numbers of containers for this example are fictional and represent no real industry participant. The new intervention rate and average time taken were assumed and the fee for service costs are using current (2011) fee for service rates DAFF currently enforces.

Notes: (a) Assumed a reduced intervention rate of 50 per cent under new arrangements. (b) Assumed an average time taken of 60 minutes per container under both scenarios. (c) As per DAFF’s fee for service rates, a rate of $90 per 30 minutes was used. Additional costs incurred outside quarantine fees are also incurred such as transport, container lifts and storage space at Quarantine Approved Premises (QAPs). However these have not been included as these would be charged by the QAP and not DAFF.

Reduced administrative complexity in establishing and managing approved arrangements

Most industry participants operate either as a QAP, or under compliance agreements, although:

- universities can operate a large number of QAPs
- some participants (such as waste providers) can operate as a QAP and also have a range of compliance agreements in place.

Administrative costs

The proposed biosecurity legislation could reduce the current administrative costs for both industry participants and government. Under the proposed biosecurity legislation, there could be one approved arrangement covering a range of activities of an industry participant rather than multiple arrangements as is the current process. Biosecurity officers would no longer be required to process multiple applications, assess multiple arrangements and complete multiple audits for those industry participants that apply under the new approved arrangement model.

Application costs

The Department intends to move away from the yearly renewals to a model that sees renewals required less frequently.

Industry participants may benefit from reduced application costs (both time and money costs) because of the need for fewer agreements. Further, depending on their arrangement, product, supply chain or other detail, they may experience less disruption to their business processes. This is because an audit and compliance program could be aligned with a single approved arrangement rather than multiple audits for multiple existing arrangements.
Impacts associated with transition to approved arrangements

Existing QAPs and compliance agreements will remain valid on commencement of the Act (one year after Royal Assent). The intent is to transition these existing agreements to approved arrangements within 18 months of commencement and/or as existing QAPs and agreements expire (two and a half years after the legislation receives Royal Assent).

In transitioning across, participants will need to pass a fit and proper person test and there may be some time spent understanding the transition process and completing paperwork. The provisions under the proposed Biosecurity Legislation provide the Director of Biosecurity and the Director of Human Biosecurity with the ability to apply the fit and proper person test and gather personal information from applicants. Information to make a determination will comprise publically available information, information gathered in the course of conducting business with other government agencies and information provided by the person. This is to ensure that persons covered by approved arrangements or who have been granted import permits are persons that are able to appropriately manage biosecurity risks. This is important because such a person might be involved in the importation of high risk goods or be approved to undertake activities to manage their own biosecurity risks with oversight by the Commonwealth. An import permit or an approved arrangement is a privilege rather than a right and means that the person is allowed to do certain things the general public are not allowed to do. It is important that such persons are considered fit and proper to be able to conduct these activities and there is no reason to believe that the person will not operate within the scope of their approval or adhere to any conditions or requirements that are placed upon it. As per the Acts Interpretation Act 1901, person includes a corporation or an individual.

The operational detail of changes to application processes and required content and information are not available. However, it is unlikely substantive new costs would be incurred as existing agreements are rolled over to an approved arrangement if the applicant is seeking to continue a similar arrangement. That said, a number of submissions highlighted examples of costs that might be incurred such as the development of manuals and procedures. To provide some indication of the potential magnitude of costs, it is assumed that:

- Time to deal with paperwork related to the transition to an approved arrangement – assumed to be 30 minutes.
- Fit and proper person test - processing fee: $42\textsuperscript{16}.
- Time required to comply with ‘fit and proper person’ test requirements: 30 mins\textsuperscript{17}.
- Value of time: $71 per hour (including on-costs and overheads)\textsuperscript{18}.
- Reduction in number of parties subject to an approved arrangement (currently around 1433 compliance agreements and 2824 QAPs, assume for illustrative

\textsuperscript{16} Estimated cost based on the fee for a National Police Check application from a non-government organisation (eg: commercial entities like brokers, migration agents etc) is $42. Source: http://www.afp.gov.au/what-we-do/police-checks/national-police-checks.aspx#fees.

\textsuperscript{17} The regulatory impact statement for the proposed amendments to the Children’s Services Regulations 1998-Anaphylaxis Management and Criminal History Check estimates that complying with a police check will take on average 30 minutes of time.

\textsuperscript{18} Based on ABS, Weekly Average Earnings, Australia, May 2012 (fulltime, adult, total earnings) and grossed up to account for on-costs and overheads of 16.5 per cent and 50 per cent respectively. These estimates are based on published guidance that was derived from a number of generic and plausible estimates to be used in the absence of more specific data. (Government of Victoria, 2007, Victorian Guide to Regulation, Department of Treasury and Finance, Melbourne). Please note that this per hour estimate is not a net present value calculation.
purposes a 40 per cent reduction from these figures in terms of likely number of approved arrangements although precise number may differ from this).

This equates to a total cost of around $289,000 assuming the costs of transition are all incurred at the beginning of the first year.

**Potential costs and benefits for Government**

There will be costs to government to transition those that currently operate as a QAP or under compliance agreements. This will involve assessing material that is provided by those seeking to transition across, and assessing whether applicants are fit and proper persons. As with other impacts in this chapter, the precise cost to government will depend on the nature and extent of the information that must be assessed. More broadly, there will be potential costs to government of administering a greater number of approved arrangements with industry participants than is currently the case.

**Summary of impacts**

<table>
<thead>
<tr>
<th>Impact</th>
<th>Industry participants</th>
<th>Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broader scope and flexibility of approved arrangements</td>
<td>Increased number of arrangements facilitated under new legislative settings</td>
<td>Potential cost of administering a greater number of approved arrangements with industry participants</td>
</tr>
<tr>
<td>Reduced administrative complexity in establishing and managing approved arrangements</td>
<td>Current arrangements can be managed more efficiently at a lower cost to business</td>
<td>Benefit through reduced costs of managing approved arrangements (higher efficiency)</td>
</tr>
<tr>
<td>Impacts associated with transition to approved arrangements</td>
<td>Cost of transitioning to approved arrangement for each business currently under QAP or compliance agreement.</td>
<td>Cost of transitioning businesses to approved arrangements.</td>
</tr>
</tbody>
</table>

**Public consultation**

Several submissions received during the consultation period stated that, in theory, approved arrangements are a cost effective and resource friendly option, however more information would be required to know whether they will in fact lead to savings. It was also stated that the approved arrangement provisions provides opportunities for regulatory burden reduction, decreased overall costs to industry and government and streamlining of systems.

Submissions also highlighted the need for appropriate accreditation, auditing and performance monitoring systems using appropriately qualified auditors, exemptions from providing securities or mandatory securities and the need for more specific information on what arrangements can be approved, as the current legislation is quite specific.

While several of the issues raised in submissions and throughout the consultation were the result of misinterpretation of the proposed biosecurity legislation, many others will be addressed in the regulations and accompanying polices and documentation.

Importantly approved arrangements do not intend to significantly alter the existing QAP and compliance arrangement schemes. Rather the intention is to replace them with a single combined model that is more flexible and expands, rather than restricts, the circumstances in which an arrangement can be entered into with the Commonwealth. If current QAP arrangements with DAFF meet the requirements in the legislation for an approved arrangement (i.e. operations adequately manage risk and applicant meets fit and proper
person test), it is likely that they can continue unaltered as an approved arrangement under the new legislation. (Note: each arrangement will be considered on its individual merits, so approval cannot be guaranteed).

In terms of using appropriately qualified auditors for approved arrangements, the provisions allow for the appointment of third party auditors. The auditor does not necessarily have to be a biosecurity officer but an expert in a relevant field.

Comments were considered about the impact of requiring some organisations to provide a ‘security’ as a condition of an approved arrangement. Security is intended to be a compliance tool, so that if a Biosecurity Industry Participant does not manage biosecurity risks in accordance with its approved arrangement, the security may then be used by the Commonwealth to pay for managing that incident. This is not a mandatory provision within the legislation and is in fact a discretionary provision that may be used by the relevant Director. The financial capacity of an organisation to provide an amount of security and the level of biosecurity risk posed by the proposed arrangement will be considered by the Director.

Approved arrangement regulations will be released for public consultation.

**First points of entry**
The *Quarantine Act 1908* currently requires overseas vessels and aircraft entering Australia to arrive at a first port of entry, currently listed in the *Quarantine Proclamations 1998*. The Quarantine Act allows the Governor-General to proclaim a port or a landing place as a first port of entry, and may include conditions or restrictions, (eg a port may be limited to receiving a specific class of goods, vessels or aircraft). This is intended to ensure that a first port has the facilities to manage the quarantine risks associated with the people, goods, vessels and aircraft it receives. Vessels can be properly processed at these first ports and inspected (if required) by DAFF staff.

**Nature of the problem**
While the *Quarantine Proclamation 1998* lists the 59 ports that are proclaimed as first ports of entry, there is currently no transparent process which sets out how ports qualify to be proclaimed or any requirements (including associated infrastructure requirements) that a first port must meet to ensure it can be serviced by biosecurity officials. Further, there is little clarity around what area constitutes a port in terms of geographical boundaries which is important for determining biosecurity risk.

Likewise, there is no clear mechanism to remove a port or landing place’s first port status, if the level of biosecurity risk is not being adequately managed, a condition of approval has been contravened or the first port of entry has been decommissioned. In fact there are a number of proclaimed first ports of entry listed in the *Quarantine Proclamation 1998* that no longer receive a substantive volume of international vessels (for a variety of reasons) or are not in use at all (dormant first ports of entry). For example, the Port of Yamba is rarely used as a first port of entry and in the event it is used, can only be used for the landing of timber products arriving from New Zealand or Norfolk Island. There are around four to five dormant first points.

There are also instances where investment and business needs (eg a new mine that commences operation) have led to some areas being used intensively over a short period of time however the closest port may not be a proclaimed first port of entry. To use such a port,
each vessel applies for permission under section 20AA of the Quarantine Act each time they enter the port. The approval is only valid for entry at that time and may be subject to conditions, and so some locations can be the subject of many one-off applications in a given year. This imposes administrative costs on vessel operators. Under s20D of the Quarantine Act, permission can also be sought to land a good at a port not proclaimed to receive that good (which may also be subject to conditions).

Further, there is the potential that vessels can enter and leave a port which is not proclaimed without the knowledge of regulators. This particularly occurs in areas where there is new traffic and the port has not been proclaimed (ie where the system has not kept up to date with the most probable ports for vessel traffic, such as in new areas of industrial activity). These entries increase the biosecurity risks in the region where no biosecurity compliance is being undertaken.

**Options to address the problem**

*No regulation*

A ‘no regulation’ alternative would allow for anything to be imported through any port in Australia, irrespective of the level of biosecurity risk. This option is not feasible as it would unacceptably increase the risk of animal and plant pests and diseases entering, establishing, spreading and potentially causing harm to people, the environment and the economy.

*Self regulation*

Under ‘self-regulation’, those arriving at a first point of entry would regulate their own activities according to industry participant’s-formulated rules and codes of conduct, with industry participants solely responsible for enforcement. This is not a feasible option for first points of entry as there are strong public interest concerns and potentially high risk events in relation to first points of entry, of which many of the costs are not internalised by those operating the vessel arriving in Australia.

In addition, market forces will not require industry participants to appropriately identify and manage biosecurity risks to Australia in relation to first points of entry. Those arriving at a first point of entry may limit their management activities to identifying and preventing harm to their own business rather than identifying and preventing harm to Australia. Some entering at a first point of entry will also lack the expertise required to identify and manage biosecurity risks. For example a commercial vessel arriving at a first port will not necessarily have a vested interest in any environmental impacts from any pests present on the vessel. As Biosecurity officers are experienced in regularly carrying out routine vessel inspections, they are more attuned to identifying obvious and (more importantly) potential biosecurity risks that aren’t necessarily associated with immediate commercial impacts, such as mosquito larvae found in any receptacles. In a world of ‘self regulation’, vessel masters may not have the skill/equipment/motivation to thoroughly inspect their vessel for pests, and send them to an entomologist for identification; which is routine (if necessary) for Biosecurity officers.

*The current legislation*

Continuing with the current legislation would lead to the continuation of the above problems, and therefore this is not considered to be a feasible option going forward.
Proposed biosecurity legislation
Under the proposed biosecurity legislation, the Director of Biosecurity may determine a first point of entry for overseas aircraft or vessels.

In deciding whether to make a first point of entry determination, the Director of Biosecurity must be satisfied that the requirements set out in the regulations are met and that the level of biosecurity risk associated with the operations of the port or landing place is acceptable. This is to ensure that biosecurity risks associated with the people, goods, vessels and aircraft it receives are being managed. The Director of Biosecurity can consider any matter that they deem relevant when determining whether they are satisfied. A first point of entry can be determined subject to conditions, for example a first point of entry may only be authorised to receive timber.

All overseas vessels and aircraft subject to biosecurity control are required to go to a first point of entry when entering Australia. On entering a first point a master must ensure that the vessel or aircraft enters a biosecurity entry zone.

Similarly a vessel or aircraft that is subject to biosecurity control may seek permission from the Director of Biosecurity to travel to a place that is not a first point of entry. A vessel or aircraft may seek permission from the Director of Biosecurity to unload goods at a port or landing place not determined to receive those goods.

A biosecurity officer will have the power to direct a master of an overseas vessel or aircraft to enter a specific port or landing place, or to not enter one or more specific ports or landing places (these may or may not be first point of entry). The proposed biosecurity legislation will also give a biosecurity officer the ability to enter any landing place or port in Australia, to perform functions or exercise powers without the consent of the operator.

The proposed biosecurity legislation will provide the Director of Biosecurity with the ability to suspend or revoke a first point of entry determination if the level of biosecurity risk is not being adequately managed, a condition of approval has been contravened or requirements for approval change.

Assessment
The proposed biosecurity legislation will provide flexibility for DAFF to negotiate with first point of entry operators regarding how they can manage their biosecurity risks to an acceptable level in the most efficient way. It will also establish the minimum level of regulation required to effectively manage biosecurity risks at a first point of entry while providing DAFF with the capacity to enforce any requirements or conditions. The proposed legislative approach effectively equates to direct supervision, as only government will have the ability to declare a first point of entry. This will ensure comprehensive powers for biosecurity officers to manage biosecurity risks at ports and landing places.

The remainder of this section sets out the costs and benefits of the proposed biosecurity legislation specifically on:
- businesses (port operators and vessel masters)
- government
- other stakeholders (consumers and the general public).
Potential costs and benefits for business (port operators)

Greater transparency and certainty
Setting out requirements for first points of entry in regulations would provide a more transparent framework and accountable decision making process than is currently in place. This would clarify the responsibilities for port operators to be designated as a first point of entry, providing greater certainty both in terms of the application process, and the requirements to maintain this status over time. It would also ensure port operators are aware of the circumstances under which a first point of entry status may be revoked.

While the benefits of improved transparency and certainty are difficult to quantify, they are important for business and strategic planning. The required investment in facilities for port operators to maintain first point of entry status is an important element in their forward investment planning – understanding what is required to maintain this status allows operators to determine the value of this status compared with the costs associated with maintaining the infrastructure over time. For some ports, this decision will make business sense, while for others it may not (as discussed in more detail below). For all of these decisions, certainty around government decision making helps to reduce risks associated with investment.

Compliance costs
Under the proposed biosecurity legislation, first point of entry port operators would be subject to a greater regulatory burden than is currently the case under the Quarantine Act. These compliance costs can be assessed across two broad categories:

- Costs associated with applying to become a first point of entry (including costs associated with demonstrating compliance, such as providing documentation, externally provided evidence, etc).
- Costs associated with upgrading current facilities to meet requirements (which may be achieved within a transition period).

Application costs
There would be a cost to industry participants associated with applying to become a first point of entry. There would be time costs associated with completing the application process and a possible monetary fee set by DAFF for submitting and assessing an application. In addition, this application process would involve a port operator demonstrating that it can manage the biosecurity risks associated with its operations in the application process before it can be determined as a first point of entry. This demonstration of adequacy or providing of evidence to meet biosecurity risks may be done through submitting detailed documentation and/or hosting site visits. It is expected that port operators would incur a cost to undertake these activities of compiling evidence to demonstrate their capabilities. Where possible the intention is to build on or use information already provided to other regulatory agencies such as the Australian Customs and Border Protection Service.

Costs of upgrading facilities
The second type of compliance cost relates to the potential need for some port operators to upgrade current facilities to meet requirements in the regulations. Some ports may not currently meet the requirements set in regulations, and would be required to undertake upgrades to meet standards (where they have committed to do so when applying for first point of entry status). These upgrade costs may result from tasks such as delineating boundaries, providing for waste management and providing facilities for biosecurity officers.
New requirements for providing particular facilities for biosecurity officers would most likely cause some current port operators to incur a cost. The extent of these costs will depend on the required outcomes set out in regulations and case by case assessment of how these outcomes can be met and will vary significantly across operators. Specifications for required facilities would reflect the size of the port, the port environs, the type of operations at the port and the type of goods, vessels, aircraft and people the port would receive. Some large operators may already have in place the required structures/facilities and will not incur any costs at all. Other operators may require significant upgrades or entirely new infrastructure. It is reasonable to assume that for some operators, implementation costs could be significant, and some may choose to not continue to be proclaimed under new requirements or have a different basis of proclamation. Additional maintenance costs relating to the upgrading facilities might also be incurred (above and beyond those maintenance costs already incurred), but this would depend on the nature of the upgrade requirements, and extent of current maintenance activity and size of operations.

The transition time provided to operators to meet obligations will have an impact on the scale of implementation costs. This is because the length of transition time influences the costs associated with retiring existing infrastructure prematurely before normal upgrading schedules. The longer the transition time, the lower the implementation costs for ports. Conversely, the longer transition time will have an influence on the effectiveness of the plans, as this extends the period during which facilities have not been upgraded or extended as required. Under the proposed biosecurity legislation there will be a three year transition period once the Act commences which will be one year after Royal Assent, a total period of four years. Stakeholders considered three years to be an adequate period of time to allow a port or landing space to comply with the conditions required for approval.

These expected compliance or regulatory costs are in addition to the current regulatory burden already imposed on industry participants by other Australian Government regulatory schemes. The list below highlights key schemes that are already in place and make up part of the regulatory environment surrounding industry participants that are involved in activities relating to first points of entry.

- Customs Regulations 1926
- Aviation Transport Security Regulations 2005
- Migration Regulations 1994
- Agricultural and Veterinary Chemicals Regulations 1995
- Imported Food Control Regulations 1993
- Hazardous Waste (Regulation of Exports and Imports) Regulations 1996

Costs of compliance will vary depending on how consistent the proposed changes to first points of entry build on these existing regulatory requirements.

One consultation participant (a practising Customs Broker) stated that: "[Most first points of entry are already] established and should not need a lot of work/cost to meet the new conditions that could be applied. It is more likely to be ‘country’ ports that would require more cost to meet the guidelines and conditions to operate as a first point. Correcting the current approved list and adjusting resources to suit should see cost reductions and thereby allow resources to be better used. Often ports have surplus or under used infrastructure so there should not be a need for a lot
of new and expensive infrastructure to be built, rather upgrading what already existing – again a cost savings to port operators and DAFF.”

Impact on ports that are not maintained as first points of entry

Under the proposed biosecurity legislation, DAFF would be able to suspend or revoke port/landing places’ first point of entry status. Some currently proclaimed ports may not meet the new requirements unless they undertake significant facility upgrades. Consequently, some landing places may choose to not apply to become a first point of entry under the proposed biosecurity legislation and thus have their first point of entry status revoked. This would mean that port would no longer be able to receive international vessels (for their first entry to Australia).

There are currently 59 proclaimed First Sea Ports and 29 First Airports within Australia (a total of 92 first points of entry currently proclaimed). To determine the potential impact on industry participants, an evaluation of the status of current first points of entry (ports only) was undertaken. Through consultation with industry participants, it is believed a portion of these may not be able to meet the requirements of being deemed a first point of entry under the proposed biosecurity legislation unless significant upgrades were undertaken to their facilities.

Current first points of entry that may be unable to meet the requirements may be those ports which currently have restrictions in place as to whether or not animals, plants or goods can be landed there as the restrictions indicate that the port only undertakes a narrow or limited set of operations. This limitation in operations may in turn mean the port has a limited range of facilities available for biosecurity officers. Consequently, the port may decide that it would be inappropriate from a business perspective to maintain a first point of entry status given the potential significant cost of upgrading facilities and the benefit from maintaining first point status. Accordingly, a port under current restrictions may not apply under the new legislation resulting in the termination of their current first point of entry status.

Table 3 highlights the proportion of first points of entry (sea ports only) that have total, partial or no restrictions in place regarding animals, plants or goods. Restriction was defined to be where no animals, plants or goods could be landed at the port, partial restrictions was considered to be if one or two items could not be landed, and unrestricted is where all three components could be landed at the first point of entry. As Table 3 illustrates, approximately 25 per cent of ports currently have a restricted status. It is these ports that may decide to forgo applying under the proposed biosecurity legislation and have their first point of entry status terminated.  

<table>
<thead>
<tr>
<th>Type</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restricted</td>
<td>16</td>
<td>25.4%</td>
</tr>
<tr>
<td>Partially restricted</td>
<td>40</td>
<td>63.5%</td>
</tr>
<tr>
<td>Unrestricted</td>
<td>7</td>
<td>11.1%</td>
</tr>
<tr>
<td>Total</td>
<td>63</td>
<td>100%</td>
</tr>
</tbody>
</table>

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20 Consultations were completed with DAFF employees and with Ports Australia.
The requirements for first point of entry status are to be set in regulations. The extent to which these requirements may dissuade current first ports of entry from applying under the proposed biosecurity legislation is unclear, as the requirements are still to be determined. However, the requirements would include some flexibility to reflect port scale, environs, type of operations and type of good, vessel and people the port receives (ie smaller ports would not have the same requirements as larger ports).

The costs for those ports that choose to not apply for first point of entry status under the proposed biosecurity legislation would be the loss of any profitable activities forgone. These costs will vary considerably across ports. The ports most likely to have their first point status not maintained are expected to be those ports that are currently under utilised and do not have the required facilities/ infrastructure in place to effectively manage biosecurity risks given their current limited use by international vessels.

_Potential costs and benefits for business (vessel masters)_

**Increased transparency of port requirements and fewer applications to land at non-proclaimed ports**
The proposed changes to the legislation regarding first point of entry would also have an impact on vessel masters and pilots. Vessel masters and pilots seeking entry to Australia would have greater certainty as to what facilities would be afforded to them upon arriving at a first point of entry.

It is expected that vessel masters would be more impacted by the change to legislation than pilots. This is because current use of first ports of entry by international vessels and aircraft differs. Most international aircraft arrive at a major airport that is a proclaimed first point of entry and most likely has adequate facilities for managing biosecurity risks (such as Sydney, Melbourne and Perth).

Alternatively, due to passenger requirements, trade flows or new investment projects, vessels are sometimes required to land at a non-proclaimed first point of entry. Under current arrangements (s20AA and s20D), this requires individual vessel masters to seek permission to land from either the Health Minister or Director of Quarantine and (if sought under s20AA) the permission is valid for the specified entry only. This has resulted in multiple vessel masters incurring the cost of seeking permission to enter the same non-declared port that for a period of time may be under heavy use (for example for the commencement of a new mine).

Under the proposed biosecurity legislation, an improved framework would be in place to manage short term port usage. The new framework would potentially allow for the declaration of a first point of entry for a period of time when heavily used which could then be revoked when the port usage by international vessels reduces. The framework would also mean that vessel masters have a more transparent view of those ports proclaimed as a first point of entry and thus could plan accordingly, avoiding the cost of seeking permission to land at a non-declared first point of entry. The approach under the proposed biosecurity legislation would also reduce the frequency of one-off applications from vessel masters to land at a non-proclaimed first point of entry.
Potential costs and benefits for Government
The requirement for vessels and aircraft to enter at a first point of entry provides the ability to manage the department’s resources appropriately and effectively. It would be inappropriate and costly for the department to service all Australian ports and it would be unsuitable to expect all port operators to provide the necessary facilities to manage biosecurity risks in case of a landing of a vessel or aircraft.

Adequate facilities
The requirements under the proposed biosecurity legislation would increase the efficiency and effectiveness of biosecurity officers by providing adequate facilities for officers to complete their biosecurity management objectives. It would mean that officers have the necessary tools and facilities available to them at each port to carry out specific biosecurity duties relevant for that port. That is, it would ensure that biosecurity risks are managed effectively as well as efficiently as the right facilities for each port would be available given each port has differing service needs and levels.

A result of the requirements is that all DAFF officers would have a better understanding of each port’s characteristics (for example boundaries, infrastructure) and be aware of the facilities to expect at each port. Thus officers would be able to better prepare and plan for managing biosecurity risks at each port, potentially reducing the time required to undertake activities at the port.

Non-proclaimed ports
The approach under the proposed biosecurity legislation would reduce the frequency of one-off applications from vessel masters to land at a non-proclaimed first point of entry (currently around one per day). It is estimated that this could reduce one-off applications by around 50 per cent.

In turn, this would also increase the efficiency of biosecurity officers as it would lessen the frequency, time and associated monetary cost of sending a team of biosecurity officers to a non-proclaimed port to undertake appropriate biosecurity management tasks on the vessel who sought permission to land at a non-proclaimed port.

Potential costs and benefits for other stakeholders (consumers and the general public)
Consumers who use ports that do not continue as first points of entry
Those businesses or individuals that may rely on the use of a particular port, which does not continue on as a first point of entry under the proposed biosecurity legislation may incur additional costs associated with using a different port to received goods. The extent to which this occurs will depend on which ports no longer continue as first points of entry, and which industry participants rely on these ports. As noted above, the ports which are most likely to not continue as a first point of entry are those which currently have limited use and provide a narrow range of services. It may be that some industry participants still rely on these ports due to their remoteness to other ports (that is, the next nearest port is a substantive distance away).
Summary of impacts

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Impact</th>
<th>Description</th>
<th>Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port operators</td>
<td>Greater transparency and certainty.</td>
<td>Greater transparency and certainty for port operators relating to the first point of entry process due to requirements being set in regulations.</td>
<td>Positive</td>
</tr>
<tr>
<td>Compliance costs and regulatory burden</td>
<td>There would be two additional compliance costs applicable to those port operators who choose to apply for first point of entry status: 1) application and demonstration costs and 2) upgrade of facilities costs to meet the requirements set in the regulations.</td>
<td>Negative</td>
<td></td>
</tr>
<tr>
<td>Change in first point of entry status as decided by port operator.</td>
<td>If the cost associated with upgrading facilities to meet the requirements within regulations is greater than the expected revenue generated from undertaking first point of entry activities, ports may decide to forgo applying for first point of entry status under the proposed biosecurity legislation.</td>
<td>Negative</td>
<td></td>
</tr>
<tr>
<td>Vessel masters</td>
<td>Greater transparency of port requirements and potential reduced submissions to land at non-proclaimed ports.</td>
<td>Superior framework to work within resulting in greater transparency of port requirements and potential reduced submissions to land at non-proclaimed ports.</td>
<td>Positive</td>
</tr>
<tr>
<td>DAFF</td>
<td>Greater efficiency and effectiveness in completing required operational tasks.</td>
<td>Greater efficiency and effectiveness in completing required operational tasks due to the greater provision of facilities by port operators and reduced visits to non-proclaimed ports.</td>
<td>Positive</td>
</tr>
<tr>
<td>Other stakeholders</td>
<td>Impacts on consumers who use ports that do not continue as first points of entry.</td>
<td></td>
<td>Negative</td>
</tr>
</tbody>
</table>

Public consultation
There were few references to first points of entry within the submissions received and where mentioned were generally supportive of changes from the current approach of declaring first ports and landing places in the Quarantine Proclamation 1998 to a more streamlined and transparent process. It was stated that a key benefit would be more certainty for airport and port operators in the requirements to be a first point of entry operator.

It was noted that there may be additional costs for non-compliant first point of entry operators to become compliant under the new legislation and this may cause some port operators financial hardship to invest in the equipment and infrastructure required. It was suggested that assistance should be afforded so these operators can comply with the new arrangements.

Another submission supported the capacity for greater flexibility in defining first points of entry but made the point that the provision of infrastructure for quarantine purposes was now the responsibility of new owners/operators of ports seeking recognition as first points of entry.

A government submission supported the ability for the proposed process to determine what is an appropriate first point of entry based on level of risk and ability to manage risks, with ongoing requirements to maintain a specific biosecurity status. The submission also stated that there is clear benefit in being able to set an appropriate level of protection from biosecurity threats when determining first point of entry, and to then require this level of protection.

Compliance requirements for first points of entry will be provided in regulations and accompanying policies and guidelines to be released for public consultation. Assistance,
monetary or otherwise, is not an issue considered for the draft primary legislation and is a matter for government during implementation.

**Biosecurity zones**
The Australian Government currently assumes a relatively narrow biosecurity reach even though its Constitutional powers allow for broader regulation. Specifically, the Australian Government has not yet exercised its full Constitutional power but rather has focused on regulating border activities.

The *Quarantine Act 1908* currently allows for the creation of a monitoring and control area within 400 meters of a point where goods and cargo are discharged (eg at a first port of entry). In this area quarantine officers can carry out vector monitoring and control activities, but these monitoring powers are currently limited to human health risks.

Onshore activities however have generally been the responsibility of state and territory governments, with the assistance from the Australian Government in particular instances.

**Nature of the problem**
This relatively narrow focus of the Australian Government has caused a range of issues, including:

- lack of powers for the Australian Government to manage incursions in Australia
- additional, and sometimes overlapping, biosecurity measures imposed by individual states and territories
- the non-traceability of animal and plant matter of greater biosecurity interest once it passes the border
- inefficient strategies and actions due to the uncertain roles and responsibilities of both individual states and territories and the Australian Government
- inadequate information sharing and coordination between the states and territories.

There is disagreement over specific roles and responsibilities which is leading to gaps in the continuum and is therefore detrimental to Australia’s biosecurity. The capacity of the Australian Government, state and territory governments to respond in emergency situations also varies, which may impact on the ability to effectively prevent the incursion of pest and disease.

**Options to address the problem**

*No regulation*
A ‘no regulation’ option would have the Australian Government playing no part in the post-border management of pests and diseases. This would leave the states and territories to manage post-border incursions of pests and diseases. This is inconsistent with the Australian Government’s leadership role in the post-border biosecurity space as recognised by Australian Government/state agreements, decision making and consultative forums. The ‘shared responsibility’ approach was also outlined and recommended in both the Nairn review and the Beale review.

*Self regulation*
Due to the involvement of the state and territories, it is not open to the Australian Government to initiate ‘self-regulation’ arrangements under which businesses would regulate their own activities in relation to biosecurity zones according to industry participant’s formulated rules and codes of conduct, with industry participants taking sole responsibility
for enforcement. ‘Self-regulation’ is also not feasible as there would be many industry participants and others (including members of the public) moving within, and in and out of, biosecurity zones. Coordinating the activity and movement of these people would be almost impossible and, even if it were possible, it would be prohibitively burdensome from an administration perspective. Further, there are strong public interest concerns and high risks associated with biosecurity zones and market forces will not require industry participants to appropriately identify and manage biosecurity risks to Australia.

**Direct supervision**

Direct supervision would involve the Australian Government overriding state and territory laws in relation to biosecurity zones. This option is not feasible as the states and territories have important roles to play in the post-border biosecurity space as recognised by the Australian Government/state agreements, decision making and consultative forums. The ‘shared responsibility’ approach was also outlined and recommended in both the Nairn review and the Beale review.

**The current legislation**

Continuing with the current legislation would lead to the continuation of the above problems, and therefore this is not deemed to be a feasible option going forward.

**The proposed biosecurity legislation**

The proposed biosecurity legislation will provide the Australian Government with greater capacity to assist with responses to post-border incursion of pests and diseases. While the powers are currently available to the states and territories, the biosecurity legislation will allow a nationally consistent response to pests or diseases through the use of one set of powers when needed. The biosecurity legislation will also extend the scope of the Australian Government’s post border powers to include plant and animal biosecurity risks. The Australian Government will continue to work with states and territories through arrangements such as the Emergency Plant Pest Response Deed, the National Environmental Biosecurity Response Agreement and the Emergency Animal Disease Response Agreement to jointly manage biosecurity risks.

The proposed biosecurity legislation will provide biosecurity officers with the power to order biosecurity measures in relation to goods, conveyances and fixed property, by issuing a biosecurity control order to manage biosecurity risks onshore. A biosecurity control order can only be issued where the biosecurity officer suspects on reasonable grounds that it is necessary to prevent or control the establishment or spread of a pest or disease. In addition, the Director of Biosecurity would have the ability to declare biosecurity zones (as well as sub zones within a zone) and to apply post border biosecurity measures within these zones. The powers that may be used in zones to manage risks onshore will be listed in the legislation.

There will be three types of zones that can be declared by the Director of Biosecurity:

- **Biosecurity zone (ongoing)** - Biosecurity zones which are established on an ongoing basis will be used for those areas where there is a requirement for an area of biosecurity control on an ongoing basis. A good example of this is around a port or airport, where there is continual need for management of biosecurity risks, with the arrival of goods or persons. The powers available in biosecurity zones would:
  - direct that biosecurity measures specified in the determination be taken in respect of goods, a conveyance or fixed property in the zone
– direct specified persons, goods or conveyances to enter or leave the zone at a specified place or places or to submit to screening before entering or leaving the zone
– direct that goods and conveyances not be moved into or out of the zone without permission (which may be subject to conditions)
– allow biosecurity officers to enter and remain on private property in the zone for the purposes of performing powers and exercising powers under the Act (with an obligation to produce an identity card to a person in charge of the property) without consent
– direct that the zone be identified and marked
– require persons in charge of goods, conveyances or fixed property in the zone to answer questions and provide documents
– enter private property in the zone without consent to inspect goods
– enter private property in the zone to conduct pest and disease monitoring activities without consent
– stop a conveyance for the purposes of inspecting the conveyance or goods on the conveyance
– direct a person in the zone to
  ◦ leave the zone
  ◦ subject himself or herself to biosecurity measures specified in the determination on entering or leaving the zone
  ◦ inform another person, or other people, of matters specified in the direction
– set up equipment or other structures in the zone, including on private property without consent
– direct a person in charge of property to carry out pest and disease monitoring activities.

- Monitoring zone (ongoing or temporary) - A monitoring zone would allow a biosecurity officer to perform monitoring activities, to ensure that a pest or disease is not present at a location. It may be ongoing (such as around a first point of entry) or temporary (if declared around a biosecurity response zone). It is possible that a monitoring zone may be upgraded to a biosecurity response zone if a pest or disease is found in a monitoring zone, and affects multiple properties.
- Biosecurity response zone (temporary) - The Director of Human Biosecurity would have the power to declare a human health response zone and to apply post border measures to deal with listed human pest and diseases within the zone. The Act will not compel the Australian Government to act, but allows it to, complementing rather than replacing existing powers used by state and territory governments.

**Assessment**
A number of submissions stated that there is merit in the proposals regarding biosecurity zones to manage the risk and help prevent the negative impacts from pests and diseases. The value of a national approach and the Commonwealth playing a role in the management of serious threats was also recognised.

Some state governments highlighted concerns around potential conflict between Commonwealth and state/territory regulation of zones. The intention is to consult closely with state and territory governments to ensure understanding and avoid any confusion. It was emphasised during the consultation phase that the proposed powers provide another tool by which incursions could be managed and that they would operate within the exiting consensus arrangements.
The potential impact of the proposed biosecurity legislation on business, and other stakeholders more broadly, is dependent on the following factors:

- The extent to which these measures may impose costs on business or other stakeholders by restricting their normal operations (i.e. restricting access to property, restricting movement of people, vehicles or goods, requiring monitoring activities).
- The extent to which the proposed arrangements will improve the management of biosecurity risks, including reducing the potential spread of an introduced species or disease.
- The frequency with which the measures may be used by government (i.e. the three types of zones noted above).

Each of these factors is discussed in the following section.

**Potential costs and benefits for businesses**

The potential costs of new Biosecurity zone powers vary across the three types of zones that may be declared.

**Biosecurity zone (on-going)**

There are expected to be some transition costs for business at the time of establishment, although they are likely to be minor given the nature of the areas. The establishment of these zones is expected to have a relatively low impact, given existing arrangements in these areas (where there are already areas around ports and airports which manage biosecurity risks).

**Monitoring zone (on-going or temporary)**

The extent of costs to businesses and other stakeholders associated with a monitoring zone will vary considerably depending on the size of the area captured, and the monitoring activities that would take place in the zone. That said, given the nature of monitoring activities, the degree of cost associated with disruption and inconvenience is likely to be small (in particular in comparison to a biosecurity response zone).

**Biosecurity response zone (temporary)**

The declaration of a biosecurity response zone would involve the greatest degree of disruption and inconvenience for businesses and other stakeholders, and the highest potential cost. The likely costs of this measure depend on the extent of potential measures conducted within the response zone (such as restricting movement of people and goods into and out of the area, requiring use of property by biosecurity officials, requiring destruction of goods etc). In addition, costs are more likely to be incurred by business given the potential short lead time provided for business to adjust the changes (i.e the zone can be declared at short notice with no opportunity for business to be prepared ahead of time). Under the base case, there are existing state and territory powers that can be used to impose a majority of these provisions and requirements. The costs associated with these measures, therefore, are only those that would not have otherwise been incurred by the use of similar powers at a state or territory level.

The extent of these costs would vary depending on the size of the area declared, the number of businesses operating within the zone, the measures taken by biosecurity officials and the length of time that the zone is declared. It is likely, therefore, that the costs associated with this measure would have wide variance (i.e. some may impose relatively low costs if they are...
applied to a small area, or the area does not include a large number of industry participants, while others may impose significantly higher costs).

**Potential costs and benefits for government**
The more significant costs to government relate to monitoring zones and biosecurity response zones:

- The extent of costs to government associated with a monitoring zone will vary depending on the size of the area captured, and the monitoring activities that would take place in the zone. That said, given that nature of monitoring activities, it is likely to be small (in particular in comparison to a biosecurity response zone). The declaration of a biosecurity response zone would involve costs for government to put in place the zone and undertake associated activities to address any risks. These measures however are only temporary and would be used on an as need basis, where an Australian Government response is required and is agreed with relevant jurisdictions.

**Potential costs and benefits for businesses and society**
The key benefit of the proposed changes will be improved management of biosecurity risks in:

- on-going management of risks around key areas where there are high levels of goods and persons entering Australia
- timely and consistent responses to particular incidents where pests or diseases are introduced to Australia.

The potential benefits of this enhanced approach to management of risks will be realised by those industries the measures are put in place to protect (or manage exposure to risks). The extent of these benefits will vary across particular cases that biosecurity zones are used. Better or consistent management of biosecurity incidents are likely to have a benefit in terms of reducing the costs incurred by affected business, governments and other stakeholders (for example by limiting the spread of the pest or diseases).

These costs include:

- loss of revenue from sales of commodities or goods, which cannot go ahead due to the introduction of a pest or disease
- losses associated with damage to industry participants reputation, which can be incurred over a much longer time period than the incident itself
- flow-on costs for associated industries and communities (for example, industry participants providing services to affected industry participants).

The precise costs and benefits of the proposed biosecurity legislation depend on the manner and frequency with which the powers are used, which is uncertain.

**Likely frequency of application of powers**
The frequency of use of the proposed powers has significant impact on the overall costs and benefits of the proposed changes to powers. It is reasonable to assume that:

- Biosecurity zones – will be established around key areas, and are unlikely to be changed significantly over time (ie zones around ports or airports).
- Monitoring zones – will be used relatively infrequently, will most often be used in conjunction with biosecurity response zones or around first points of entry.
- Biosecurity response zones – will be used infrequently, based on criteria set in regulations (which are still to be developed). The use of these zones will be focused
on serious incidents which require post-border management (such as restricting movement of goods and persons).

Summary of impacts

<table>
<thead>
<tr>
<th>Type of biosecurity zone</th>
<th>Costs to businesses and other stakeholders of declaration of zone</th>
<th>Benefits through improved response to risk</th>
<th>Likely frequency of use of powers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Biosecurity zone (ongoing)</strong></td>
<td>Establishment costs for industry participants within the biosecurity zone (expected to be small)</td>
<td>Benefits in improved efficiency in management of biosecurity risks in areas of high risk</td>
<td>In use continually in key areas (eg ports and airports)</td>
</tr>
<tr>
<td><strong>Monitoring zone (ongoing or temporary)</strong></td>
<td>Costs associated with allowing monitoring activities on property</td>
<td>Benefits to regions which may be affected by the spread of an introduced pest or disease (adjoining to biosecurity response zone)</td>
<td>Moderate to low frequency – used in conjunction with biosecurity response zones Also used around first points of entry to monitor potential risks associated with arriving vessels</td>
</tr>
<tr>
<td><strong>Biosecurity response zone (temporary)</strong></td>
<td>Costs associated with allowing biosecurity management activities on property, restrictions on movement of persons, livestock and goods</td>
<td>High benefits concentrated within regions or industries directly impacted by the incident (including adjacent areas at risk) Will provide improved ways to manage incidents such as pest and disease outbreaks</td>
<td>Low frequency – used only in the case of the introduction or spread of pests or disease that requires monitoring and control</td>
</tr>
</tbody>
</table>

Public consultation

Environmental organisations suggested the establishment of a biosecurity zone category for high value conservation areas with high biosecurity risks known as ‘conservation biosecurity zones’, as the basis for implementing biosecurity measures, plans and monitoring. The zones should be declared by the Secretary of the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) on advice by a scientific committee, and biosecurity arrangements negotiated in bilateral agreements with state and territory governments. While there is scope to apply a zone to address a disease or pest risk the legislation does not allow for a pre-emptive zone for conservation purposes. Whilst the draft legislation clearly covers environmental biosecurity, environmental conservation at the Commonwealth level remains the responsibility of SEWPaC.

Submissions from state governments considered the proposal to increase the Australian government’s post border powers in relation to biosecurity zones important. In particular, the provisions that allow the Australian government to monitor for and manage incursions and implement emergency response procedures.

The potential for conflict between the proposed biosecurity legislation and relevant state and territory legislation was also highlighted and clarity regarding roles and responsibilities, and a clear definition of when the Commonwealth may use these powers was deemed critical. Administrative arrangements on how these powers will be used will be further developed with state and territory governments leading up to the implementation of the new legislation. Information will also be provided to stakeholders in the future as this content is developed.
Other aspects of the legislation

This section briefly considers other less significant aspects of the proposed biosecurity legislation.

Travel movement restrictions

There is a need for government to act to mitigate the risk of spreading communicable diseases to ensure that Australia complies with its international health obligations.

Human Quarantine Officers currently have limited powers to restrict the movement of people out of Australia in instances where there is an increased threat of communicable diseases. Under the proposed biosecurity legislation, the Director of Human Biosecurity would have the ability to restrict a person suspected of having a listed human disease from travelling on an overseas passenger aircraft or vessel.

Biosecurity interventions would be tailored to accommodate an individual’s circumstances (e.g. their health, travel history or future movements), with the ability to escalate to broader responses as information becomes available. For example, an ill passenger could be ordered into isolation, ordered to undergo treatment or vaccination, ordered to stay at home for a period, ordered to report their health status regularly, or simply required to provide accurate contact details. The new legislation also seeks to further implement the International Health Regulations (2005) and provide the Australian Government with powers to prevent, protect against, control and provide a public health response to the national and international spread of disease.

The proposed biosecurity legislation would allow the Director of Human Biosecurity to issue an alert to all border agencies and relevant operators, advising them of the travel restrictions in place. This alert would be used to ensure suspected individuals subject to a traveller movement restriction are not allowed to board an aircraft or vessel.

The cost of travel movement restrictions is expected to be minimal due to the low expected frequency with which the power is expected to be invoked and the associated impact. While it is difficult to estimate the exact number of times this is likely to be used each year, it might be in the range of around 2-3 times per year on average.

Should an individual be identified by Customs at the primary line as being subject to travel movement restrictions and being unable to travel, the impact would be the removal of their baggage from the aircraft or vessel and the voiding of the traveller’s boarding pass. Affected individuals would potentially forfeit some or all of any payments made to the airline or vessel and other associated travel costs (eg accommodation at destination).

Management of human remains

Under the Quarantine Proclamation 1998, a permit is required for the importation of human remains that are not accompanied by a death certificate stating the cause of death, are not of a high risk nature or where the deaths occurred during transit. The current permit system requires the involvement of staff from Department of Health and Ageing, the Department of Agriculture, Fisheries and Forestry, and the Department of Foreign Affairs and Trade.
Human biosecurity risks associated with imported human remains are negligible due to the:

- low number of imported human remains (approximately 500 human remains are repatriated to Australia each year with less than 250 of these currently requiring an import permit (potentially even less than 100 per year))
- the low likelihood of death from communicable disease of an Australian travelling overseas
- low global incidence or prevalence of the diseases which present a risk to human health in Australia
- high standards of infection control in Australia, particularly for funeral industry participants, which are regulated under occupational, health and safety legislation and practices
- high levels of vaccination, sanitation, hygiene and water safety in most areas of Australia
- high standards of health care available in Australia, and the speed and effectiveness of public health action.

As a result of the negligible level of human biosecurity risk, an ongoing permit system (ie regulation) does not represent an efficient use of Australian Government resources. In the unlikely event that there is a communicable disease outbreak in Australia resulting from imported human remains, public health measures are likely to be successful in managing and preventing the spread of most diseases.

Under the proposed biosecurity legislation, a permit would no longer need to be obtained to transport human remains into Australia, as human remains will generally be permitted to enter Australia without restriction. Requirements will only be applied to specific classes of remains, as specified by the Director of Human Biosecurity. Biosecurity risks associated with individuals who have died in transit will continue to be managed by State Police and the Coroner.

Circumstances which alter the above factors may lead to changes in the human biosecurity risk associated with importing human remains. For example, the import volume and likelihood of death from communicable disease may be increased during wartime; or a large scale outbreak of a communicable disease may occur overseas. In those circumstances, the Australian Government can respond to changes in the human biosecurity risk level by placing import requirements on particular classes of human remains.

From information provided by Department of Health and Ageing, approximately 500 human remains are repatriated to Australia each year with less than 250 of these currently requiring an import permit (potentially less than 100 per year). It is expected that these cases will no longer require an import permit and this would result in two benefits to those needing to repatriate remains into Australia.

Firstly, there is the obvious benefit of avoiding both the associated fees and time cost associated with applying for a permit, estimated as follows:

- lodgement of import permit application fee (permit application fee) $150
- assessment of import permit application fee (standard good) $40
- average time to fill out the required documentation online 30 minutes.
Based on the estimate of around 100 permits currently per year, this equates to a NPV over
10 years of around $158,500.\footnote{Based on ABS, Weekly Average Earnings, Australia, May 2012 (fulltime, adult, total earnings) and grossed up to account for on-costs and overheads of 16.5 per cent and 50 per cent respectively. These estimates are based on published guidance that was derived from a number of generic and plausible estimates to be used in the absence of more specific data. (Government of Victoria, 2007, Victorian Guide to Regulation, Department of Treasury and Finance, Melbourne). Please note that this per hour estimate is not a net present value calculation.}

Most importantly for impacted parties however, there would no longer be the emotional cost incurred by those who may have recently suffered the death of a family member and must spend the time and effort navigating government processes when quite often these processes are not related to biosecurity risk and are unnecessary.

Currently, 20 – 40 individuals die in transit to Australia. These would continue to be subject to current arrangements and would continue to fall under police jurisdiction.

**Sanctions and offences**

The proposed biosecurity legislation has been designed so that the most appropriate sanction for non-compliance can be applied. One major change from the Quarantine Act is the introduction of a civil penalty regime in addition to existing criminal offences, which provides the department with greater opportunity to take action where non-compliance has been identified. Submissions provided as part of the consultation process were generally in support of the civil penalty regime.

The maximum penalties have been developed to respond to acts of serious non-compliance where significant biosecurity harm is caused to animal, plant or human health. The maximum penalty may not be appropriate in all circumstances and it is a decision for the courts to determine the most appropriate penalty during sentencing.

Additionally, the proposed biosecurity legislation maintains the existence of an infringement notice scheme from the Quarantine Act for high volume, low complexity offences for example with airline passengers, and introduces an enforceable undertaking scheme as an alternative to a civil or criminal penalty.
Inspector General of Biosecurity

As part of its preliminary response to the Beale Review, the Australian Government agreed to establish a statutory office of the Inspector General of Biosecurity. In advance of the enabling legislation interim arrangements are in place. On 1 July 2009, the government appointed Dr Kevin Dunn as the Interim Inspector General of Biosecurity to provide independent assurance of the performance and appropriateness of biosecurity systems and risk management measures that are the responsibility of the biosecurity divisions within DAFF. The Interim Inspector General of Biosecurity is independent of the biosecurity divisions of DAFF and reports to the Australian Government Minister for Agriculture, Fisheries and Forestry. The incremental costs of a permanent Inspector General of Biosecurity therefore are expected to be minimal. However an Inspector General of Biosecurity is expected to avoid the need for future Beale and Nairn style reviews.

Regulations

The Governor-General has the power to make regulations if they are required or permitted in the proposed biosecurity legislation or they are necessary or convenient to give effect to it. This type of general regulation power is common across Commonwealth legislation.

The regulations will clarify and provide further detail on what is contained in the legislation and what will be included in policy. It is also anticipated that regulations may be similar to existing regulations. The department will work with the Office of Best Practice Regulation to determine the need for future RIS’s.

An example of regulations that are required is in relation to approved arrangements, which requires the relevant Director to be satisfied of the requirements in the regulations before approving an industry arrangement. An example of regulations that may be required to give effect to the proposed biosecurity legislation that are not specifically mentioned in the legislation, are regulations dealing with the response to a biosecurity emergency situation.

Abandoned goods

The proposed biosecurity legislation will also create a trigger for being able to deem potentially hundreds or thousands of goods as abandoned or forfeited each year. The current requirement to hold goods takes considerable time and effort for departmental staff in storing goods for extended periods of time (sometimes up to three months). For each of the goods, it can take staff a total of a few days in sending letters, providing response periods, and following up.

Covering the field for imports

The proposed legislation means that Commonwealth legislation will “cover the field” in respect of the prohibition or restriction of bringing in or importing goods into Australia. This means that the Act will override state or territory laws that relate to bringing in or importing goods to the extent they are inconsistent with Commonwealth laws and that state and territories will not be able to impose measures that are more restrictive than those imposed by the Commonwealth.

The legislation provides considerable flexibility. For example, bringing in certain types of goods could be completely prohibited or could be allowed with conditions. Conditions imposed on the import of goods will be based on the outcomes of a national risk assessment process which takes into account regional differences in pest and disease status.
This clarity in the legislation will increase industry certainty by eliminating any risk of inconsistent requirements imposed by states and territories. States and territories are already restricted, to an extent, from imposing more restrictive conditions as these can place Australia in violation of its international obligations with subsequent risks to trade. However, clarity in the legislation removes any doubt and means any attempts by the states and territories to do so can be readily challenged. Overall, this is expected to provide a benefit to Australia’s trade relationships without losing the flexibility to accommodate regional differences.

**Overall impact of legislation on biosecurity**

The proposed legislation provides a legislative framework for Australia’s biosecurity system. It will enshrine Australia’s Appropriate Level of Protection (ALOP) in legislation. The World Trade Organization (WTO) ‘Agreement on the Application of Sanitary and Phytosanitary Measures’ allows WTO members to determine their own level of protection; however, it must be applied in a consistent manner. This is known as the Appropriate Level of Protection. That is, “providing a high level of sanitary and phytosanitary protection, aimed at reducing risk to a very low level, but not to zero.” This does not represent any change in Australia’s ALOP as it has been agreed administratively with the States and Territories for some time. However, it does provide importers and trading partners with additional certainty that the standard is being applied.

The benefits of the legislation largely relate to its enabling of improved administrative and operational practices that in turn enable more efficient use of available biosecurity resources to target risk to achieve biosecurity outcomes consistent with Australia’s ALOP. However, the legislation is not designed to introduce a new or stricter level of protection and, in that sense, it does not change the biosecurity outcomes that are being sought.

**Preferred option, implementation and review**

**Preferred option**

This RIS has identified and considered a range of problems with the Quarantine Act. The assessment illustrates the anticipated costs and benefits of the proposed biosecurity legislation compared to the current situation, and demonstrates the potential for improved business processes through approved arrangements, better targeting of resources and greater administrative efficiency.

Moreover there is a broad, unquantified benefit of the proposed biosecurity legislation from improving the overall quality of the legislative framework for biosecurity, including:

- Reducing the costs associated with interpreting complex, prescriptive and outdated legislation (a benefit to both government and business).
- Enabling the benefits of broader reform to be realised (a benefit which is unquantifiable but important to acknowledge in this analysis). Legislative reform will assist the plans for broader reform in biosecurity primarily in the form of more flexible legislative mechanisms that will allow change.

Based on this analysis, proposed biosecurity legislation is assessed as representing an improvement over the base case and is the preferred option for Government consideration.

**Implementation and review**

The Act will comment one year after Royal Assent. In some instances, transitional arrangements will apply, for example for approved arrangements. Existing QAPs and compliance agreements will remain valid on commencement of the Act. The intent is to transition these existing agreements to approved arrangements within 18 months of
commencement and/or as existing QAPs and agreements expire (two and a half years after the legislation receives Royal Assent).

For first points of entry, under the proposed biosecurity legislation there will be a three year transition period once the Act commences which will be one year after Royal Assent, a total period of four years.

The regulations will clarify and provide further detail on what is contained in the legislation and what will be included in policy. It is anticipated that regulations may be similar to existing regulations. The department will work with the Office of Best Practice Regulation to determine the need for future RIS’s. Ongoing monitoring of any reforms will be undertaken by the department to ensure that the objectives are being achieved and whether any further reforms are necessary.
Appendix A – International Health Regulation requirements

Figure 2: International Health Regulations core capacity requirements for surveillance and response

<table>
<thead>
<tr>
<th>Community Level</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• detect events involving disease or death above expected levels</td>
<td></td>
</tr>
<tr>
<td>• report all available information immediately to the appropriate health care</td>
<td></td>
</tr>
<tr>
<td>team</td>
<td></td>
</tr>
<tr>
<td>• implement preliminary control measures immediately</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Intermediate Level</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• confirm the status of reported events and support or implement control</td>
<td></td>
</tr>
<tr>
<td>measures</td>
<td></td>
</tr>
<tr>
<td>• assess reported events immediately and report essential information to the</td>
<td></td>
</tr>
<tr>
<td>national level</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>National Level</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• <strong>Assessment and notification:</strong></td>
<td></td>
</tr>
<tr>
<td>• assess reports of urgent events within 48 hours</td>
<td></td>
</tr>
<tr>
<td>• notify the WHO immediately through the National Focal Point of all potential</td>
<td></td>
</tr>
<tr>
<td>PHEICs</td>
<td></td>
</tr>
<tr>
<td>• <strong>Public health response:</strong></td>
<td></td>
</tr>
<tr>
<td>• determine rapidly the control measures required to prevent further</td>
<td></td>
</tr>
<tr>
<td>spread</td>
<td></td>
</tr>
<tr>
<td>• provide support through specialised staff, laboratory analysis and</td>
<td></td>
</tr>
<tr>
<td>logistical assistance</td>
<td></td>
</tr>
<tr>
<td>• provide on-site assistance as required to support local investigations</td>
<td></td>
</tr>
<tr>
<td>• provide links with senior officials to approve and implement</td>
<td></td>
</tr>
<tr>
<td>containment/control measures</td>
<td></td>
</tr>
<tr>
<td>• provide direct liaison with other relevant government ministries</td>
<td></td>
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<tr>
<td>• provide links with key operational areas for the dissemination of</td>
<td></td>
</tr>
<tr>
<td>information</td>
<td></td>
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<tr>
<td>• establish, operate and maintain a national public health emergency</td>
<td></td>
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<tr>
<td>response plan</td>
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<tr>
<td>• provide all of the above on a 24 hour basis</td>
<td></td>
</tr>
</tbody>
</table>

**Figure 3: International Health Regulations core capacity requirements for airports, ports and ground crossings**

**At all times**

- provide access to appropriate medical services and staff, equipment and premises
- provide access to equipment and personnel for transport of ill travellers
- provide trained personnel for the inspection of conveyances
- ensure safe environment for travellers through inspection programs
- provide a program and personnel for the control of vectors and reservoirs in/near points of entry

**Responding to events that may constitute a PHEIC**

- provide appropriate public health emergency response by establishing and maintaining a public health emergency contingency plan
- provide assessment of and care for affected travellers or animals by establishing arrangements with local medical and veterinary facilities
- provide appropriate space to interview suspect or affected persons
- provide for the assessment and quarantine of suspect travellers
- apply recommended measures to disinsect, derat, disinfect, decontaminate or otherwise treat baggage, cargo, containers, conveyances, goods or postal parcels
- apply entry or exit controls for arriving and departing travellers
- provide access to specially designated equipment and trained personnel for the transfer of travellers who may carry infection or contamination

Appendix B – Consultation feedback
In preparing the RIS, the department and the consultant, PricewaterhouseCoopers (PwC), consulted with the Department of Health and Ageing (DoHA).

Industry roundtable
The department and PwC also facilitated an industry roundtable on the RIS on 8th July, 2011. The Table 4 outlines the industry associations that participated in the industry roundtable. Each industry stakeholder was given the opportunity to provide additional information via email after the workshop.

Table 4: Industry roundtable attendees

<table>
<thead>
<tr>
<th>Group</th>
<th>Industry Association</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shipping and Aviation Group</td>
<td>Ports Australia</td>
</tr>
<tr>
<td></td>
<td>AQIS Industry Cargo Consultative Committee</td>
</tr>
<tr>
<td></td>
<td>Qantas Airways</td>
</tr>
<tr>
<td></td>
<td>Carnival Australia</td>
</tr>
<tr>
<td></td>
<td>Board of Airline Representatives Australia</td>
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<tr>
<td></td>
<td>Shipping Australia</td>
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<tr>
<td></td>
<td>Airports Association</td>
</tr>
<tr>
<td></td>
<td>Conference of Asia Pacific Express Carriers</td>
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<tr>
<td></td>
<td>Australian Petroleum Production and Exploration Association</td>
</tr>
<tr>
<td>Industry Legislation Group</td>
<td>AQIS Industry Cargo Consultative Committee</td>
</tr>
<tr>
<td></td>
<td>Invasive Species CRC</td>
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<tr>
<td></td>
<td>Invasive Species Council</td>
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<tr>
<td></td>
<td>Animal Health Australia</td>
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<tr>
<td></td>
<td>Plant Health Australia</td>
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<tr>
<td></td>
<td>Custom Brokers and Forwarders Council</td>
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<tr>
<td></td>
<td>National Farmers Federation</td>
</tr>
</tbody>
</table>

Distribution and comments on the draft RIS
In May 2012, a draft of the RIS was provided to members of the Industry Legislation Working Group for their consideration and comment. This working group comprises:

- Invasive Animals CRC
- Board of Airline Representatives of Australia
- DHL
- Qantas
- Conference of Asia Pacific Express Carriers
- Carnival Australia
- Plant Health Australia
- AQIS - Industry Cargo Consultative Committee
- Animal Health Australia
- Invasive Species Council
- National Farmers Federation
- Shipping Australia
- Australian Petroleum Production and Exploration Association Limited
- Brisbane Airport Corporation
- Customs Brokers and Forwarders Council of Australia Inc
- Ports Australia.
Following the public release of the RIS, PwC participated in 17 consultation meetings organised by the department on the proposed biosecurity legislation. The meetings were with State Government agencies and representatives of industry with some open to the general public (all capital cities and Newcastle). At the meetings, the department presented an outline of the proposed provisions in the draft Biosecurity and Inspector-General of Biosecurity Bills and PwC outlined possible impacts of the provisions in these bills on stakeholders, based on the analysis included in the draft RIS that was publicly released on 4 July 2012.

The meetings could be characterised as mostly information sessions. Although many stakeholders asked questions and sought clarification of the provisions of the bills, only a few were in a position to identify specific impacts of the proposed biosecurity legislation on them and/or provide information that would help to improve the analysis in the RIS (e.g., data or concrete examples that demonstrated a relative change in impact due to the proposed biosecurity legislation compared to the existing legislation). Some stakeholders did identify impacts that were not directly related to the legislation.

This is not surprising as there was a large amount of information for attendees to absorb and in many cases stakeholders did not seem to have extensively reviewed information about the legislation prior to the meetings. Further, much of the proposed biosecurity legislation updates existing legislative provisions and apart from improving clarity, may not result in day to day changes relative to the current situation for many stakeholders. In addition, the Act provides an overarching framework for biosecurity legislation. Much of the detail will be in subordinate legislation. It is expected that it will be easier for stakeholders to understand possible impacts on them when more of the detail in the subordinate legislation and in operational policies is released and/or developed.

Stakeholders were also provided with the opportunity to provide additional information in written submissions.

**Approved arrangements**

Specific comments/questions:

- Have we considered how the arrangements affect small businesses (RIS presentation emphasises large businesses)?
- The RIS should not imply these arrangements are voluntary (e.g., all quarantine approved premises will need one).
- What are the implications for moving goods under a biosecurity control order between first points of entry/biosecurity zones/a location with an approved arrangement and what are the cost/benefit implications of this?
- How will my existing quarantine approved premises/compliance agreement change—will it have to be reworked? Can I keep things the way they are? How can I know the implications for me until I know how audit and compliance arrangements might change? What will be the change in charges?
- The examples of possible savings for business in the RIS do not reflect the proposed changes—they could occur under the existing legislation.
- While there are benefits from industry playing an increased role in relation to risk management, approved arrangements could lead to poorer risk management outcomes if not managed properly.
- Universities may have multiple quarantine approved premises each with specific requirements, so any benefits from moving to an approved arrangement will depend on the details and requirements of that approved arrangement.
Issues and proposals for addressing them:

- The presentation and analysis in the RIS emphasised potential benefits for large importers with control of end to end processes of having the option of a single and less prescriptive arrangement. It has been assumed that benefits will mostly accrue to those businesses that do not already have a quarantine approved premises or compliance agreement but would enter into an approved arrangement under the new legislation.
- In most cases, stakeholders were more concerned to understand the transition arrangements for their existing QAPs or compliance agreements. Some of these represented smaller businesses and wanted to understand how the content of their existing arrangements could change and what new costs might be incurred and when they might need to change.
- It is understood that the incremental change for those with existing quarantine approved premises or compliance agreements would be relatively small but with potential to take advantage of additional flexibility that will be available in approved arrangements. The RIS sets out illustrative estimates of transitional costs.
- Some stakeholders commented that most businesses do not have a mix of quarantine approved premises and compliance agreements. This has been clarified in the RIS.
- One stakeholder attended several meetings and several times raised the issue of how the new provisions for biosecurity zones and approved arrangements provide for moving goods under biosecurity control between these areas. The department held scenario testing sessions with this stakeholder to clarify this.

First points of entry

Specific comments/questions:

- How many existing first ports might not apply for ‘first point of entry status’? What is likely to be the net change in number as these are transitioned to first points of entry?
- Comment made that about 40 per cent of existing first ports would not meet the new requirements. Does DAFF have a sense of this?
- Could an inland site be considered a first point of entry, eg an intermodal terminal and does this need to be considered in the analysis. If not, what status would it have and what arrangements would cover it?
- Are owners or operators of ports likely to incur the costs – one stakeholder’s view was that it was the operators/stevedores most likely to be impacted but this needed to be clarified, i.e. who would apply for first point of entry status, the owner or operator?
- There may be costs associated with having the ability to accept quarantinable waste for some facilities, but it depends on the specific criteria that are developed.

Issues and proposals for addressing them:

- Although the likely change in number of first ports as they are transitioned to first points of entry cannot be predicted with certainty, it may be possible to provide more information about the number of first ports not actively used as first ports or only used in a very limited way.
- It is difficult to assess in aggregate what proportion of first ports may not meet requirements and may need to invest in additional facilities if first point of entry
status is sought. Ultimately, although the regulations may provide some guidance, this will depend on case by case negotiations with DAFF on the nature and requirements of each first point of entry.

Biosecurity zones

Specific comments/questions:
- Stakeholders broadly, and state government representatives particularly, wanted to better understand how the Australian Government would use the proposed powers for declaring biosecurity zones, i.e. in what circumstances would they use them? How do these powers affect existing state powers and practices? What are specific examples of when they would be used?
- Stakeholders sought clarification about who would be obliged to act (state and territory government or the Australian Government) and how quickly and who would be responsible if there was a failure to act?
- Who would incur the costs of having the zones in place? (Australian or state governments or industry?)
- Some stakeholders sought clarification about whether these zones might be used to manage existing pests rather than new ones.
- Some stakeholders thought that the proposed arrangements could have helped to avoid previous inter-jurisdictional issues (for example in relation to fruit flies).
- Some stakeholders queried who currently pays monitoring costs, e.g. around airports. Is it industry or Government and who would pay these costs if a monitoring zone was declared? Could this be a cost for Government that isn’t recognised in the RIS?
- One stakeholder advised that - since most incursions occur in one jurisdiction – it is reasonable to assume that the powers would be used infrequently.
- There were different views on whether the powers will lead to a more timely response. Ultimately it depends on how the arrangements will work in practice. Also need to carefully implement the changes to minimise the risk of confusion.
- There will be costs to the Australian Government associated with having and using the new powers.

Issues and proposals for addressing them:
- Explain more clearly in the RIS the interplay between state based and Australian Government powers and how these could be used to implement agreements such as Emergency Animal Disease Response Agreement, Emergency Plant Pest Response Deed and National Environmental Biosecurity Response Agreement.
- Clarify that the provisions do not compel the Australian Government to act but give it the power to.

Human health provisions
- No substantive comments on the impacts of these provisions outlined in the RIS were recorded.

Other issues raised

Specific comment/questions:
- What is the relationship between the national Appropriate Level of Protection and regional interests given the Australian Government will cover the field? Do they align in, for example, Tasmania (e.g. in relation to salmon, apples etc?) or will regional interests be negatively affected?
• Inspector General – do aspects of the provisions in this Bill limit scope and impact of role? e.g. consultation with Director of Biosecurity on work program. What might be the costs associated with the secretariat?
• The provisions for Risk Import Analyses suggest information will be published – some stakeholders raised issues related to privacy etc. Is this likely to be any different to current provisions and what would the impacts be?
• New information gathering powers in the proposed biosecurity legislation could increase costs for government and/or industry depending on extent to which used and requirements on business. Can possible costs be acknowledged?
• Members of the National Farmers Federation sought clarification of whether the Australian Government’s powers for ‘covering the field’ in terms of import conditions might apply retrospectively, e.g. in the case of importing apples to Tasmania.
• One stakeholder asked for the consideration of the impact of transferring some decision making powers from the Minister to the Director of Biosecurity.
• Some stakeholders queried how a situation in which a container or containers could be not be unloaded would affect other cargo/containers if they could not be moved until the other containers were. Would it be managed differently to today and could that result in additional costs for some importers waiting for their goods to be unloaded? What documentation/information gathering is required to facilitate this and what costs would that impose?
• One stakeholder suggested that the RIS should consider an option involving increased harmonisation with food safety importation requirements.
• The RIS should consider the overall impact of the Bill on biosecurity in Australia, and results should acknowledge impacts on the community, government, and industry.

Consultation with states and territories
Consultation with states and territories has taken place as part of the legislation drafting process and through the consultation period following release of the draft Bills.

Preliminary provisions in the Act include commencement, the objects of the Act, extension of the Act to external territories and concurrent operation with state and territory laws. The Act does not limit concurrent operation of state and territory laws except in relation to the regulation of the importation of goods and ballast water.

The Australian Government will cover the field with respect to importation into Australia and Australian import conditions will be based on the outcomes of a national risk assessment process, taking into account regional differences in pest and disease status. The Australian Government may also choose to prohibit the importation of goods into part of Australia (e.g. particular states or territories), where scientifically justified.

Additional biosecurity measures can be taken at a state level to respond to regional differences in pest and disease status. States and territories will continue to be consulted through a series of workshops to define this policy and through the Intergovernmental Agreement on Biosecurity.

Submissions on the RIS
A number of written submissions touched on the impact of the proposed legislation and the associated cost benefit analysis. Where relevant, these have been acknowledged and
discussed in the body of this RIS. In general, the majority of submissions sought additional
detail which the subordinate legislation and supporting administrative guidance material is
likely to address. Many stakeholder groups representing diverse perspectives recommended a
wide range of proposals they felt would better address the government’s aims for biosecurity
reforms. The department has considered all submissions and notes that — as can be expected
with most regulatory systems—there are some stakeholders calling for more stringent
regulation such as in environmental biosecurity and other stakeholders calling for less
stringent regulations such as industry groups from the trading sector.
Appendix C – Reference list


