

# **Submission by Shipping Australia Limited to the Quarantine and Biosecurity Review**

## **Executive Summary**

In SAL's view, AQIS does a great job in very difficult circumstances but it could do a lot better to perform its functions more efficiently if it was given a degree of autonomy in the implementation of policy and the appropriate IT resources to achieve significant improvement.

SAL has had its differences over the years with certain approaches adopted by AQIS but there are robust consultation mechanisms to have such issues discussed in an open and frank forum. Whilst we have noted greater reluctance in recent years for AQIS to engage in what industry would term a responsive and proactive handling of issues, it could well be due to factors and policies external to AQIS and undermines the ability of AQIS to:

- Streamline their risk assessment process
- More accurately target their surveillance activities
- Expand their co-regulation activities
- More effectively focus their resources on high-medium risk areas
- Amend/reduce the unwarranted legalistic approach in their dealings with industry
- Develop comprehensive IT systems based on re-engineering existing but ineffectual business processes which would underpin AQIS developing a real-time risk profiling capability
- Develop a medium term strategy for pre-border activities across all quarantine programmes
- Be more transparent in the decision-making process and in consultation with industry.

It is recommended in this submission that the panel give consideration to developing AQIS as a statutory regulatory authority separate from DAFF.

It is also recommended that once a decision is made on the best governance model, consideration be given to updating and modernising the Quarantine Act.

AQIS should, in SAL's view, develop a much closer relationship with the Australian Customs Service and for the two agencies to work more closely together to protect Australia's borders and to work, in tandem, in developing major efficiency measures of direct benefit to both agencies. Whether this can be achieved by a single border agency, much closer cooperation or some other efficient mechanism, we leave to the panel to decide.

AQIS needs to be well resourced especially in building up its IT capability to meet the objectives set by governments and to respond to the ad hoc pressures that unexpectedly arise. This does not necessarily mean a more expensive operation. A comprehensive review of the cost recovery policy could well see a more productive, well resourced agency with no major increase in total costs as far as the shipping industry is concerned.

A revitalised agency meeting all its stakeholders requirements in a consistent, robust manner with well considered and agreed outputs is not only likely to significantly improve our border security as far as quarantine is concerned but will re-energise the concept of quarantine being a shared responsibility between government, industry and the community.

## **Introduction**

Shipping Australia Limited (SAL) is a peak shipowner body representing forty-one member shipping lines and shipping agents that collectively are involved with over 80% of Australia's container and car trade, over 50% of Australia's bulk and break bulk trade and are heavily involved in the cruise shipping industry. Shipping Australia also provides secretariat services to those shipping lines who are party to the Agreements registered under Part X of the Australian Trade Practices Act. Attached is a list of the current members of SAL.

SAL was created in July 2001 as the result of a merger between the Australian Chamber of Shipping and Liner Shipping Services Limited. Both those predecessor bodies and SAL subsequently have been heavily involved in both bilateral discussions with the Australian Quarantine Inspection Service as well as some of its consultative bodies ie. the AQIS Industry Cargo Consultative Committee (AICCC) and the Industry Working Group on Quarantine (IWGQ). As such, SAL is supportive of the IWGQ submission and in particular would like to draw the review panel's attention to the following paragraphs in the introduction section of that submission which we regard as being highly relevant.

“It may be opportune to quote from the 1996 Nairn review when it outlined the seven principles that underpin programme delivery:

### *Quote*

With joint ownership and involvement comes joint responsibility. Governments, industry and the general public have a shared responsibility to ensure that human, animal and plant health and quarantine protection meets the realistic expectations of the community through coordinated and effective programs. There is also a requirement to abide by the agreed rules, both national and international, governing such activities. Destructive public criticism does little to sustain the confidence of domestic consumers or of governments and consumers in Australia's export markets.

### *Unquote*

“Some of the above is difficult to reconcile with the current position which, in the view of the IWGQ, sees a quarantine regime in place that is regarded as somewhat

risk averse and reactive which does not sit well with the ‘Shared Responsibility’ concept and the general themes that underpin the recommendations of the Nairn Review as accepted by Government. The submission contains a number of examples which highlight issues where AQIS is micro managing co-regulation arrangements thus effectively not placing “trust” in the parties that are theoretically sharing responsibilities.”

The IWGQ submission goes on to say:

“The IWGQ has observed a gradual change from a proactive and innovative regime that saw AQIS working closely with industry partners and was moving into a range of areas such as developing offshore risk mitigation schemes, industry partnerships, cooperative systems developments etc to what appears to be a return to the ‘regulator/regulated’ relationship based mainly on prescriptive processes, narrow and restrictive interpretation of legal requirements and/or interpretations of the Quarantine Act and regulations. The IWGQ is aware of Import Risk Assessment (IRA) outcomes and other advice from Biosecurity being extremely conservative, prescriptive and leaving little leeway for risk based and practical applications. The resultant development of the Quarantine Operational Framework (QOF) and expansion of Standard Operating Procedures should assist in certainty and consistency for industry. The real issue is the lack of informed and confident decision making by officers in the field which can be attributed to risk averseness and prescriptive processes. This has an adverse impact on decisions being able to be made by AQIS officers based on their skills, expertise and experience.”

SAL agrees that there should be an Appropriate Level of Protection (ALOP) but it cannot be zero risk if Australia is in fact going to involve itself with overseas trade and handling visitors to and from Australia. Prohibition of such movements would be the only way of delivering zero risk.

SAL is very supportive of the shared quarantine responsibility concept but as mentioned by the IWGQ, how that is implemented and the resources available to AQIS and Biosecurity to achieve that result is the real focus of our submission.

## **Issues for consideration**

### C1: Risk assessment for Quarantine Biosecurity Continuum

The first question relates to whether Australia’s quarantine and biosecurity systems are appropriate to maintain its ALOP ie. very low risk but not zero? We would question the appropriateness of very low risk versus low risk in terms of its facilitation role which is addressed later and also its capacity from a governance perspective to fulfil the role which is also addressed later on in this submission.

The question asked is what are the benefits of Australia’s current approach to quarantine and biosecurity? This issue forms the basis of the review and is addressed in detail in the following comments. We would strongly recommend that this review examines overseas experiences and approaches to the protection of quarantine and how that fits within the strategic and legislative parameters which have been provided by the Australian Government for quarantine and biosecurity.

In this section, the question is asked ‘are threats to Australia’s marine environment and fisheries arising from bio-fouling on ships hulls and organisms in ballast water better handled in a quarantine and biosecurity framework or some other framework? Perhaps an over simplistic answer is to say that there appears to us to be no real alternatives that could handle these types of issues other than the framework provided currently by the Department of Agriculture, Fisheries and Forestry (DAFF), Quarantine and Biosecurity. Another question is whether the current strategic policy approach adequately handles these types of issues and we would argue that the inconsistency in State/Territory Government jurisdictions and their approach to these types of issues causes the problems of conflict, plurality and inconsistency and the solution does not lie in developing another complete framework. In our view, the Commonwealth should administer the system on behalf of State and Territories, thus creating one framework, better use of resources and consistency of international and national processes. SAL acknowledges that all parties need to be in agreement as to the final arrangements before AQIS can be fitted with the role of being the coordinator of the system.

## C2: The legislative framework

It is pertinent to note that while the Act was amended significantly in response to the 1996 Nairn Committee review, its core aspects were drafted over a century ago. SAL would question the relevance of the current Act in particular what is handled in the Act itself vis-à-vis regulation. We tend to the view that a comprehensive modernisation of the Act would be beneficial although we appreciate that the costs, risks and disruption of reform on this scale cannot be ignored. Nevertheless, it is appropriate in a review of this type to examine what is lacking in our quarantine risk assessment to determine whether we need to embark on such a reform. Our initial assessment, subject to further information on the costs, risks and disruption would be that dependent upon the reaction to the other issues raised in this submission, modernisation of the legislation and the reform it could bring could well be worth those costs, risks and any disruption. In many ways, lack of action in this respect could raise more substantive problems in those areas than if we did nothing.

The modernisation of the legislation very much depends on decisions taken in relation to the best governance model and structure that our future quarantine and biosecurity regime should encompass.

A case in point is confusion in the legislation, in our view, between the definition of ‘landed’ and ‘imported’ goods which has unintended consequences in terms of transhipped goods which may be goods prohibited from being imported into Australia but as they are only in transit, they are considered low risk and are certainly not being imported into the country.

In the case of such transhipment, AQIS, on advice from Biosecurity Australia, appears to have adopted a very restrictive approach by refusing outright to allow it without a permit – certainly as it relates to, for example, the international cruise industry. To the extent that there may be concerns, they should be discussed with industry to ascertain risk and determine if there are solutions to those concerns that will contain risk within an acceptable level of protection.

### C3: Jurisdictional and institutional arrangements

There are important questions raised in this part of the issues paper. First of all, is the division of roles and responsibilities between government and industry and individuals appropriate? Are they working well in practice? Shipping Australia believes that AQIS should be separated from the Department. It is appreciated that the 1996 Nairn review recommended an independent statutory authority which would assume the roles undertaken by Biosecurity Australia, AQIS and elements of the functions undertaken by the Product Integrity, Animal and Plant Health Division of DAFF as well as the Director of Animal and Plant Quarantine. In SAL's view, the regulator, AQIS should be a separate agency along the lines of the governance arrangements that relate to the Australian Customs Service, or the Australian Maritime Safety Authority.

Policy making should remain with DAFF including the relevant Divisions and the question of Biosecurity Australia being a separate authority is really an issue as to how the Australian Government would like to receive its scientific advice eg. along the lines of an organisation like the CSIRO or whether it should remain with the Department. SAL does not have strong views either way. Nevertheless, we do believe that AQIS should be a separate regulatory agency bearing in mind the current arrangements, that relate to Customs but another model is the arrangements relating to the Australian Maritime Safety Authority which is a regulator separate from the policy area of the Department of Infrastructure, Transport, Regional Development and Local Government.

Under this heading the question is also raised whether there is an appropriate interaction between these agencies and the Department and other relevant Commonwealth, State and Territory agencies? SAL believes that this is an important question and it is our belief that AQIS should be much more integrated with the policies and practices of other agencies such as the Australian Customs Service and there is also an obligation on Customs to be more proactive in their engagement with AQIS. Underlying that approach is the issue of whether a new border agency should be created in its own right comprising both Quarantine and Customs officers. It would be important that there be no deterioration in the focus on quarantine and biosecurity related barrier functions in any such move to create a single border agency. Nevertheless, in SAL's view, this option is worthy of investigation by the review panel to ascertain the costs and benefits of a different type of approach to that which presently prevails.

There are therefore two basic questions we would ask the panel to test:

- a. Should AQIS be separate from the Department as a regulator?
- b. If so, should there be a more formal arrangement with the Australian Customs Service than presently prevails in terms of a possible single border agency relating to customs and quarantine (ie. leaving aside health, immigration etc) and what are the pros and cons of doing so?

Shipping Australia shares the concerns expressed in the IWGQ submission that the current processes regarding Biosecurity Australia (BA) appear to see AQIS obliged to refer a multitude of what are considered to be minor and routine decisions on quarantine issues for 'advice/risk assessment'. As pointed out in that submission, while IWGQ is not privy to the details of the 'referral policy' it appears that few decisions on quarantine risk issues are taken without reference to BA. This has resulted in some substantial delays in applications for clearance status for a range of products. We agree that AQIS is being seen as an organisation not able to make decisions on minor matters for the reasons noted above and this is difficult to explain in today's environment. SAL believes that AQIS should be able to make informed, appropriate decisions on minor matters so that trade is not inhibited while at the same time risk assessments procedures are applied expeditiously.

We do not see a potential conflict in AQIS's joint responsibilities of facilitation and regulation similar to the approach adopted for example, by AMSA which regulates the industry but keeps an eye on the practicalities of how it can achieve beneficial outcomes for all concerned rather than concentrating purely on the strict interpretation of regulation and legislation.

The question is raised in this section who should have the ultimate decision making power on risk policy and import permits – a Minister or an independent public servant or statutory authority. In Shipping Australia's view, ultimate decision making power on risk policy and import permits should rest with the Minister.

#### C4: Culture, efficiency and resourcing

Shipping Australia is not so much concerned with the current mix of funding for quarantine and biosecurity as it is with an approach by AQIS which appears to be cost plus and not focused on productivity improvements in terms of programme delivery.

Some of the problems with sharing DAFF overheads would be resolved if AQIS was a separate statutory authority with separate funding. Furthermore, a clearer split of responsibilities between policy development and the implementation of the regulation could possibly assist with a more productive workforce as far as AQIS is concerned and hopefully lower costs.

A risk based approach which results in directing available resources to priority risk areas would significantly assist in reducing existing costs and also areas (eg. regional and remote ports) that are more demanding of overtime and travel should make a greater contribution to funding than they do at present. This needs to be debated further in the AICCC. SAL acknowledges that cost recovery is undertaken in line with the Australian Government Cost Recovery Guidelines and following discussions with industry consultative committees but nevertheless it is believed that greater effort could be made to deliver more cost effective services and still achieve AQIS targets and objectives.

In terms of intervention targets, it is notable that the present targets were really agreed in the May 2001 Budget as a result of the Australian Government's announced Increased Quarantine Intervention as a direct response to a major Foot and Mouth disease outbreak in the United Kingdom. Given that major breakout was fortunately

contained many years ago now, the present intervention targets should be questioned in terms of risk assessment, in other words to better achieve the ALOP.

A case in point is that there are many vessels that have 100% compliance records yet are still subject to 100% quarantine inspection regimes. SAL supports the suggestion in the IWGQ submission that AQIS reverts to the system that was in place prior to 2001 which very effectively dealt with risks.

The container and car trades are growing particularly strongly at the present time as is the increase in cruise passengers which does raise questions as mentioned in the issues paper of whether resources are being optimally employed to enable AQIS to best manage risk.

Better targeting of risk would result in the much better deployment of resources both in terms of staff and financial resources.

SAL does not believe there has been sufficient development of and reliance on pre-border intelligence. It is SAL's strong view that there is potential for a greater alignment between pre-border activities and the information requirements of Quarantine, Customs and Immigration to streamline processes and enhance risk management. What is essential to achieve this is a much closer relationship between the border agencies, particularly AQIS and Customs and for financial resources to be put into the information database that AQIS uses to assess risk.

It is considered essential by SAL that greater resources be put into building up the IT information base available to AQIS officers in carrying out their functions. Customs has certain information that could be shared with AQIS but nevertheless AQIS requires for its own purposes a substantial IT management and risk assessment information system.

Following extensive discussions with SAL, a trial to possibly implement an electronic pratique form (eQPAR) is presently underway and SAL has been pressing AQIS to consider the payment of charges by Electronic Funds Transfer. When appropriate, SAL would hope that AQIS could work with our members on invoice arrangements that will assist members in tracking invoices and enable faster payments to AQIS.

Shipping lines are progressively introducing Electronic Import Delivery Orders and an issue has arisen in identifying electronically coastal shipping containers that would not have to be inspected for possible external contamination. AQIS is presently unable to accommodate that request from an IT perspective so a 'work around' is presently being discussed to temporarily resolve the problem. This and other information availability issues could be addressed with a better AQIS IT system! Importantly, there needs to be an efficient interface with the Customs Integrated Cargo System, for data critical to AQIS inspections. It is appreciated that AQIS's IT systems were put on hold for some years pending the CMR coming to fruition and that developments need to take place to bring it up to date and the coastal container issue is but one of many issues that require an IT solution.

It is not only in the area of information systems that AQIS could gain a lot of benefit with closer involvement with Customs. Shifting the risk offshore is a major objective

of both Customs and AQIS and some of the initiatives that Customs is currently considering to enhance the security of the through transport supply chain, for example, as envisaged under the SAFE project of the World Customs Organisation would be of direct benefit to AQIS. Potentially the objective must be to clear, for home consumption, containers, for example, from a Customs perspective before they arrive in Australia and this requires a great deal of confidence by AQIS that they have carried out a full and proper risk assessment of those containers.

As pointed out by the IWGQ, 'one window' to government initiatives being pursued by some agencies need to be progressed as an 'all of government' initiative and not as an individual government agency agenda.

Monitoring and surveillance post-border must also be given priority by AQIS but this raises the important benefits of regulation and major auditing and compliance regimes to ensure that the agreed co-regulation objectives and compliance agreement schemes are being fully met. The activities of border agencies such as the Australian Maritime Safety Authority can also assist AQIS in terms of targeting and risk assessment. In performing their port State control activities, AMSA has access to a sophisticated computer based targeting system that works very effectively. Developing a similar computer based model for AQIS based on meeting their requirements could well reduce the number of vessels that have to be inspected. Again this needs to be complemented by an auditing/compliance regime that confirms from time to time, that quarantine objectives are being fully achieved.

Delivering good outcomes from the perspective of the Quarantine Continuum is dependent on consistent and strong application in both States/Territories and regional areas. SAL brings to the attention of AQIS through its various bilateral and multi-stakeholder forums, the need for consistency in application around the Australian coast. As pointed out in the IWGQ submission, State organisations did and 'Quarantine Tasmania' currently administers AQIS requirements and services and yet there is a problem there, for example, with double inspection of international containers that arrive and are inspected in Melbourne and re-inspected when they arrive again in Northern Tasmania. This has been the subject of direct discussions with the Tasmanian Government but, at this point in time, remains unresolved.

The development of Ballast Water Management (BWM) in Australia covering international vessels and treatment at the State level is a very good example of the lack of a national approach which would bring with it many benefits. Victoria, for example, has introduced its own ballast water management regime for interstate and intrastate vessels and Western Australia is considering introducing its own BWM regime which raises concerns with SAL that individual State/Territory procedures will not be consistent with the national regime. Most State and Territory Governments have signed an Inter-Government Agreement to work towards a national system and we look to AQIS to support that process. AQIS has stated that their legislation does not cover these activities and this is appreciated but we need to work together to achieve more consistent and national outcomes that will meet all stakeholders requirements. An issue for consideration by AQIS and State/Territory jurisdictions is whether AQIS officers could carry out the inspections for both international and domestic ballast water because the risks are very similar.

In terms of the export certification processes, some years ago Quarantine changed from inspecting grain ships at anchor to requiring them to be at the berth. This has the effect that if some defect is found at this late stage in the process, the vessel could lose its place in the queue and may have to be shifted to another berth for the defect to be rectified, would lose its position in the berthing queue and have to rejoin the queue which again does not assist Australia's export efforts. Whilst OH&S requirements must be strictly met, there are areas in Australia waters such as Kwinana that usually have calm sea conditions and it is not understood why certain exceptions at least could not be made to speed up the grain ship inspection process. A compliance scheme that enabled ship surveyors to be trained to carry out these inspections should also be investigated.

The question is raised does cost recovery have an impact on the ability of AQIS staff to deliver public good outcomes? Given that AQIS resides in DAFF, it is not understood how some of those overheads are spread across AQIS costs and it is also understood, for example, that AQIS programmes have to bear some of the costs of public relations activities eg. television advertisements highlighting the need for good quarantine practices which it could be argued should really be a Community Service Obligation. Better targeting of those staff and financial resources will clearly assist in a more acceptable cost recovery approach. We would like to emphasise, however that the discussions of cost recovery by Quarantine with industry is at a high level and, in SAL's view, much better than certain other border agencies. Nevertheless, SAL does support action that would raise the productivity of Quarantine and hopefully reduce its overall costs. Government funded activity regarding surveillance, for example, could be more appropriate than seeking cost recovery from industry. The beneficiaries of the tight quarantine regime include Australian exporters but the costs there are 40% underwritten by the government.

#### C5: Communication and consultation

Shipping Australia fully supports the government pursuing with our major trading partners an improvement of the understanding of Australia's quarantine and biosecurity system. Shipping agents work with AQIS in ensuring vessels that visit Australia are aware of our quarantine requirements but the potential for offshore mitigation of quarantineable risk has not, in our view, been fully exploited although it is acknowledged that this is an area of continual improvement and it is much better than it was some years ago. It is not felt that the outcomes of import risk analysis are effectively communicated to domestic and international stakeholders because, in SAL's view, that analysis needs to be significantly upgraded with much greater access to risk assessment data than Quarantine has had at their disposal. As mentioned above, the costs of the promotional and advertising campaigns, in Shipping Australia's view, should be fully met from consolidated revenue because it is of benefit to the Australian community overall. The campaign that 'Quarantine Does Matter' was an effective one.

A trial in which countries which are not on the current Giant African Snail (GAS) list but are known to be infected was undertaken in close consultation with SAL and was successfully completed. This type of consultation is much appreciated by SAL members.

As pointed out by IWGQ it is also worth noting that the IWGQ has developed information factsheets aimed at better offshore compliance with Australian quarantine requirements.

#### C6: Research

The only comment Shipping Australia would like to make under this heading is that the current payment arrangements for quarantine and biosecurity research appears satisfactory to SAL and we would not advocate any major structural change.

#### C7: Review

Similarly, Shipping Australia notes the current review mechanisms both nationally and internationally and they appear to SAL to be appropriate in the current environment. We emphasis again the importance of audit, certification and verification systems being used to monitor performance and to ensure compliance with the operational risk management systems for import and export of products at the border and in some cases, pre-border.