



# **NGIA Response to the ‘Draft Biosecurity Legislation’ incorporating the Biosecurity Bill and the Inspector- General of Biosecurity Bill.**

A Submission by  
**Nursery & Garden Industry Australia  
(NGIA)**

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Nursery & Garden Industry Australia (NGIA) is the peak national industry body representing producers, retailers and allied traders involved in the production of plants across all states and territories of Australia. In partnership with state and territory peak bodies, NGIA is responsible for overseeing the national development of the Australian nursery industry. The nursery industry is a significant sector of the Australian horticultural industry and employs over 45,000 people in over 20,000 small to medium sized businesses with a combined supply chain market value in excess of \$15 billion dollars annually. Depicted in Table 1 is the wide range of end users supported by the Australian nursery and garden industry.

**Table 1: National value of horticultural sectors supplied by production nurseries**

<b>Production Nursery</b>	<b>Horticultural markets</b>	<b>Economic value</b>
Container stock <sup>1</sup>	Ornamental/urban horticulture	\$2 billion retail value
Foliage plants <sup>1</sup>	Indoor display/hire	\$87 million industry
Seedling stock <sup>2</sup>	Vegetable growers	\$3.3 billion industry
Native and exotic forestry stock <sup>3</sup>	Plantation timber	\$1.7 billion industry
Fruit and nut tree stock <sup>2</sup>	Orchardists (citrus, mango, etc)	\$5.2 billion industry
Landscape stock <sup>1</sup>	Domestic & commercial projects	\$2 billion industry
Plug and tube stock <sup>2</sup>	Cut flower growers	\$700 million industry
Revegetation stock <sup>1</sup>	Farmers, Government, Landcare	\$109 million industry
Mine site revegetation	Mine site rehabilitation	Value unknown
<b>Total Horticultural Market Value</b>		<b>\$15.0 billion<sup>#</sup></b>

<sup>1</sup> Freshlogic (2008) Australian Garden Market Monitor for the Year Ending 30 June 2008

<sup>2</sup> Horticulture Australia Limited (2004) Australian Horticultural Statistics Handbook

<sup>3</sup> Australian Bureau of Agricultural and Resource Economics (2008). Australian Forest and Wood Products Statistics

<sup>#</sup> Industry currently undertaking market data evaluation project to ascertain current market value

Nursery & Garden Industry Australia welcomes the opportunity to comment on the 'Draft Biosecurity Legislation' incorporating the Biosecurity Bill and the Inspector-General of Biosecurity Bill and is supportive of its development. Indeed, the current Quarantine Act 1908 is dated and requires significant alignment to current day practices and arrangements to ensure Australia maintains a world standard in biosecurity.

Nursery & Garden Industry Australia is supportive of the broad goals to provide flexibility to efficiently and responsively manage biosecurity risks across the continuum, better manage risks that threaten Australia's human, animal and plant health and help Australian businesses by being more flexible. We also agree that the approach taken with this legislation will better manage risks in a growing global environment through a streamlined and simpler to understand framework as

established in the draft legislation. Having said this, it is imperative that the proposed framework maintains and indeed strengthens partnerships with relevant stakeholders. More importantly, the proposed framework must focus on decision making based on sound science. Key to this is maintaining and strengthening resourcing at state and national levels to demonstrate genuine investment into and shared responsibility of biosecurity.

Historically, the Australian nursery industry has had a close and long relationship with all biosecurity agencies across Australia particularly in relation to the interstate movement of plant material. The Australian nursery industry acknowledges it plays a vital role in this biosecurity continuum and is actively engaged in several biosecurity initiatives across Australia. These include on-going investment in research, development and extension initiatives, as well as the development and extension of on-farm programs driving change from the bottom up. Nursery & Garden Industry Australia is also a member of Plant Health Australia, which has further demonstrated its willingness to participate in this arena. In addition, the Australian nursery industry has developed a Policy Position on Quarantine and Biosecurity which calls for:

1. Leadership in policy development and investment in the area of quarantine and biosecurity – this recognises the impacts of policy decisions and investment on businesses and their customers.
2. Harmonised delivery of quarantine and biosecurity arrangements – establish a National Pest Risk Assessment Framework which delivers a world class biosecurity and quarantine system to whole of industry.
3. Investment in on-farm support to address quarantine and biosecurity – the realignment of investment and a commitment by governments to support on-farm practices, innovation and incentives to adapt, manage and respond to biosecurity and quarantine.
4. Recognition of established industry best management practice – this recognises and supports the Nursery Production Farm Management System (NPFMS) as a third

market access instrument for the industry and investment in research, development and extension activities.

5. Implementation of a national greenlife producer communication and information scheme – this is designed to secure the reputation of the Australian NGI through knowledge based decision making.
6. Build greater stakeholder engagement and involvement to deliver a national communication network – this will assist in building industry confidence.

The Australian nursery industry is not a large importer of greenlife and has had a traditionally small export focus, however the current activities of the industry and access to improved plant varieties are vital to its survival and ongoing expansion. The recent changes to Plant Exports Operations, incorporating Horticulture Exports Program with regards to prescribed fees has already impacted on future opportunities for export among several nursery businesses.

While many of the proposed changes to the draft biosecurity legislation address the weaknesses in the Quarantine Act 1901, several of the proposed changes are of considerable concern to the nursery industry. The industry is also concerned that the proposed legislation does not affirm the principle that the highest level of precautions should be taken in regard to biosecurity where reasonably practical by business government and individuals and feels that statement should be made in relation to this in Chapter 1. The following comments detail specific areas of industry concern from key Chapters that will and require further consideration and action.

### **Chapter 3. Managing risks – goods brought into Australia**

Paragraph MG 60 of this chapter details the process for a biosecurity officer in relation to requiring documents relating to goods to be produced. Under this clause, the nursery industry does not support the removal of any document from the place at which it was produced, however does supports the provision of copies or abstracts.

Paragraph MG92 of this chapter notes the destruction of goods. Clarification is needed on what constitutes 'reasonable grounds'. This is of immense importance because there is no recourse for industry on the destruction of the goods if they fall outside of what will be determined to be high value goods. Indeed, a process which outlines the procedure for recourse should be incorporated into this section.

Whilst it is noted that the definition of what constitutes a *high value item* will be determined in the regulations, careful consideration should be given to this term as to how it will be interpreted and applied owing to inadvertent flow on effects and impacts on the nursery industry. An example of this is a product that may have limited monetary value, but may be very scarce, such as new plant breeding material and consequently, considered to be a high value item. Also for consideration is how will the goods be treated when the high value goods definition is considered? For example, will they be considered as an individual good or as a consignment of goods? If applied to entire consignments, this may drive importers to large volume shipments and hence place increased strain on quarantine facilities and may also be seen to be detrimental to smaller importers through limiting their option for recourse. These issues need to be considered in line with a recourse mechanism and changes to the future post entry quarantine facilities.

Division two of this chapter details the Biosecurity Import Risk Analyses (BIRA). The responsibility to commence the BIRA process is at the discretion of the Director of Biosecurity and/or the Agriculture Minister and can be taken without a clear set of guidelines or requirements. The nursery industry is greatly concerned that the current proposed import process does not include a strong independent and scientific reference group which will ensure impartiality and integrity. Furthermore, the proposed legislation does not provide industry with an independent appeal process which is based on science. This is of considerable concern to the nursery industry as the proposed biosecurity legislation has omitted the use of the Eminent Scientists Group (ESG) who is currently responsible for reviewing submissions and research in relation to Import Risk Assessment's.

Furthermore, it is noted that whilst BIRA must be conducted in accordance with a process prescribed in the regulations, (Paragraph MG176) there is no mention of industry consultation in

this Chapter. Nursery & Garden Industry Australia believe that the process of industry consultation should be embodied into the Act in relation to the conducting of Biosecurity Import Risk Analyses.

Under MG200 (1) the bringing or importation of specified goods, or a specified class of goods, (prohibited goods) into an Australian territory is prohibited absolutely as noted. From the reading of this clause, it is unclear as to the true definition of a prohibited good? For example, is a prohibited good linked to the ICON database or is this at the discretion of the Director of Biosecurity?

Under MG205, the Director of Biosecurity may require security to be given in relation to conditionally non-prohibited goods. Industry is concerned that this will see unnecessary costs being borne to individuals. At present under the recent changes to Plant Export charging, ALL charges that rely on the Department of Agriculture, Fisheries and Forestry are charged including pre inspection, inspection, post inspection and 'other' activities. What will the implications be on 'security' and will the business have recourse for these decisions?

## **Chapter 6. Prevention and control measures**

As articulated previously in Chapter 3, NGIA is concerned over the destruction of goods and the interpretation of what constitutes high value goods and its part in recourse to stop destruction of goods (Paragraphs PC160 and PC162). This process needs to be articulated.

The proposed legislation enables the Commonwealth to monitor and, where necessary, manage biosecurity risks when they emerge on-shore. On one hand, this is favourable to expedite the process following an incursion. However, the nursery industry is concerned that the decision pathway to implement the control measures is left to the discretion of the Director of Biosecurity. It is unclear if the Director of Biosecurity will be the sole individual responsible for managing matters relating to a pest response. In addition, a reference to agreements such as the Emergency Plant Pest Response Deed (EPPRD) should be qualified in this Chapter.

## **Chapter 7. Approved arrangements**

While NGIA supports the introduction of Approved Arrangements that provide for the person covered by the arrangement (the biosecurity industry participant) to carry out activities (biosecurity activities) to manage biosecurity risks associated with specified goods, premises or other things, serious concern is raised about how this change will alter existing Approved Arrangements surrounding approved post entry quarantine premises. In other words, moving from existing premises arrangements to arrangements with individuals. Several businesses within the industry are small businesses and do not have the human resource capacity to fulfil the requirements of a biosecurity industry participant under the proposed Approved Arrangements. Furthermore, they are unlikely to support costs required to embark on the training to undertake these Approved Arrangements. Nursery & Garden Industry Australia would like to see the proposed Approved Arrangements maintain the provision of Approved Arrangement for premises which will provides industry with greater flexibility and assurance regarding the importation of plant products.

Paragraph AA220 details the cost of dealing with biosecurity incidents. No reference is made to agreements such as the EPPRD. How will Paragraph AA220 of the Act relate to the EPPRD or other similar binding agreements between government and industry?

## **Chapter 8. Emergency provisions**

No mention of the current EPPRD is made in relation to Emergency procedures. NGIA desires reference to be made to such industry agreements, in the Act or reference made in the Act to the applicable regulation where the EPPRD is acknowledged. This would also apply for the National Environmental Biosecurity Response Agreement (NEBRA) which sets out emergency response arrangements, including cost-sharing arrangements, for responding to biosecurity incidents that primarily impact the environment and/or social amenity and where the response is for the public good.

## **Chapter 11. Governance & Officials**

The proposed legislation provided an extensive list of Reviewable Decisions, however it fails to detail how to appeal an import decision from the perspective of stakeholders who are appealing against a decision from the Department to allow imports of particular products. There needs to be some flexibility within the legislation to add other categories of appeals to the list of Reviewable Decisions.

## **Chapter 12. Miscellaneous**

Paragraph CR82 notes that provision should be made to allow sustenance for animals subject to biosecurity control orders. Nursery & Garden Industry Australia requests that this provision be expanded to include sustenance of plants under similar conditions.

In addition, the proposed legislation specifies the Agriculture Minister may, by legislative instrument, determine that specified fees may be charged in relation to activities (chargeable activities) carried out by, or on behalf of, the Commonwealth in performing functions and exercising powers under this Act. This process is no different to how current fees are charged. However, the nursery industry has concern that nowhere in the legislation is it noted that there will be a consultative vehicle to provide users with input into how fees are prescribed and provide transparency to between the Department and the user. Nursery & Garden Industry Australia requests that a mechanism to enable this is considered. At present, the Post-Entry Plant Industry Consultative Committee (PEPICC) established in 1997 following the Nairn Report to strengthen government partnership and communication links with industry operates as the desirable vehicle for this. Industry believes that this is an appropriate mechanism for industry to provide input into fees that may be charged in relation to activities prescribed under the proposed legislation. Nursery & Garden Industry Australia is cautious about the future of fees particularly following the move to full cost recovery for horticultural exporters. A consultative committee is necessary, particularly in cases where there is over-recovery to ensure transparency between the Government and users.

## **Inspector General of Biosecurity Bill**

The process detailed under Part 5 – Section 31 in relation to handling appeals does not provide rigour behind the assessment approach. It is unclear from the legislation whether the Eminent Scientists Group (ESG), independent of Biosecurity Australia will be called upon to provide external scientific and economic scrutiny of BIRAs. The detail of the ESG in this process would be crucial in order to maintain true independence for all international appeals being brought against Australia.



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