

**IMPORT RISK ANALYSIS APPEAL PANEL
SECRETARIAT**

IMPORTATION OF CAVENDISH BANANAS FROM THE PHILIPPINES IRA - APPEAL

FINDINGS

INTRODUCTION

The Import Risk Analysis Appeal Panel (IRAAP) was convened in accordance with the *Import Risk Analysis Handbook* 2003 (the Handbook) published by the Australian Government Department of Agriculture, Fisheries and Forestry.¹

The IRAAP considered five appeals lodged in response to the *Final Import Risk Analysis Report for the Importation of Cavendish Bananas from the Philippines* (Final Bananas IRA Report) by:

- Biological Farmers of Australia
- G Grima & Co Pty Ltd
- Queensland Department of Primary Industries and Fisheries
- Australian Banana Growers' Council
- Bureau of Plant Industry, Department of Agriculture, Republic of the Philippines.

In addition to the five appeals above, letters of support for the Australian Banana Growers' Council appeal were received from Growcom and New South Wales Farmers' Association.

The IRAAP comprised Mr John Crosby (Chair) (Chair – Quarantine and Exports Advisory Council); Mr Stephen Morris (Quarantine and Exports Advisory Council); Ms Lois Ransom (Chief Plant Protection Officer); and Mr Daryl Quinlivan (Deputy Secretary – Department of Agriculture, Fisheries and Forestry).

Consistent with the Handbook, the IRAAP considers appeals, supported by a statement of reasons, based on one or both of the following grounds:

- there was a significant deviation from the process set out in the Handbook that adversely affected the interests of a stakeholder (Ground of Appeal No. 1)
- a significant body of scientific information relevant to the outcome of the Import Risk Assessment (IRA) was not considered (Ground of Appeal No. 2).

In relation to an appeal, the IRAAP may make one of three findings: the IRAAP may *allow* or *disallow* an appeal, or may find it *outside the grounds of appeal* set out in the Handbook.

The IRAAP does not consider matters relating to:

- issues falling within the ambit of the appeal in step 8 (see section 4) of the Handbook
- the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered
- the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia.

The IRAAP's assessment of the appeals follows.

¹ The *Import Risk Analysis Handbook* 2003 can be accessed from Biosecurity Australia's website at: <http://www.daff.gov.au/ba/ira/process-handbook>.

PHILIPPINES BANANAS IRAAP FINDINGS

Appellant

Biological Farmers of Australia

Ground of Appeal No. 1

There was a significant deviation from the process set out in the Import Risk Analysis Handbook that adversely affected the interests of a stakeholder.

CLAIM 1

Summary of claim

That there was a deviation from the process set out in the Handbook in that the IRA team failed to consider the economic consequences to the organic banana industry of any diseases and pests associated with the importation of bananas from the Philippines.

Finding

Claim disallowed.

Reasons

- The Handbook stipulates:

“In keeping with the scope of the Quarantine Act 1908... and Australia’s obligations as a member of the WTO, economic considerations are taken into account only in relation to matters arising from the potential direct and indirect impact of pests and diseases that could enter, establish or spread in Australia as a result of importation.

The potential competitive economic impact of prospective imports on domestic industries is not within the scope of the IRAs.” (page 9).

- The IRAAP was satisfied, on the basis of advice it received from Biosecurity Australia, that in developing the Final Bananas IRA Report, the potential economic consequences of the pests and diseases that could be associated with the importation of bananas from the Philippines were considered for all banana production in Australia including organic production. The IRAAP also noted that the impact of an incursion of black Sigatoka on the organic banana industry was considered specifically in section 10.17.2 of Part B of the Final Bananas IRA Report.
- Therefore, the IRAAP concluded that there was **no significant deviation from the process set out in the Handbook that adversely affected the interests of a stakeholder (in this case the organic banana industry).**
- As such, **the claim was disallowed.**

CLAIM 2

Summary of claim

That there was a deviation from the process set out in the Handbook in that the IRA team failed to engage effectively the Biological Farmers of Australia in the IRA process, with particular reference to ‘scientific review’ and ‘related market and production risks’.

Finding

Claim disallowed.

Reasons

- The Handbook requires the IRA team to consult and engage with registered stakeholders during several steps of the IRA process. The Handbook does not specifically stipulate that the IRA team must engage stakeholders on ‘scientific review’ or ‘related market and production risks’, however, stakeholders are provided with a number of opportunities to engage in the IRA process.
- Any stakeholder is able to register with Biosecurity Australia (Annex 5 of the Handbook). The Handbook states that Biosecurity Australia will distribute certain documents to registered stakeholders and provide them with the opportunity to provide comments on those documents.
- The IRAAP was advised by Biosecurity Australia that the Chief Executive Officer of Biological Farmers of Australia was a registered stakeholder for the Bananas IRA.
- A public file containing non-confidential submissions and other technical documentation is established at the commencement of each IRA. Each public file is held at Biosecurity Australia's office in Canberra and documents may be accessed during business hours, by prior appointment, for perusing and copying. Biosecurity Australia also maintains a website which provides access to certain documents from the public file as a consultation tool. Material is placed on the public file for the information of all stakeholders.
- IRAAP was satisfied, on the basis of advice it received from Biosecurity Australia and information available on the public file, that Biological Farmers of Australia was consulted and engaged in the IRA process, in accordance with the Handbook requirements.
- Therefore, the IRAAP concluded that **there was no significant deviation from the process set out in the Handbook that adversely affected the interests of a stakeholder (in this case the Biological Farmers of Australia).**
- As such, **the claim was disallowed.**

Appellant

G Grima & Co Pty Ltd

Ground of Appeal No. 1

There was a significant deviation from the process set out in the Import Risk Analysis Handbook that adversely affected the interests of a stakeholder.

CLAIM 1

Summary of claim

That there was a deviation from the process set out in the Handbook in that the IRA team failed to consider the economic consequences to the organic banana industry of any diseases and pests associated with the importation of bananas from the Philippines.

Finding

Claim disallowed.

Reasons

- The Handbook stipulates:

“In keeping with the scope of the Quarantine Act 1908... and Australia’s obligations as a member of the WTO, economic considerations are taken into account only in relation to matters arising from the potential direct and indirect impact of pests and diseases that could enter, establish or spread in Australia as a result of importation.

The potential competitive economic impact of prospective imports on domestic industries is not within the scope of the IRAs.” (page 9).

- The IRAAP was satisfied, on the basis of advice it received from Biosecurity Australia, that in developing the Final Bananas IRA Report the potential economic consequences of the pests and diseases that could be associated with the importation of bananas from the Philippines were considered for all banana production in Australia including organic production. The IRAAP also noted that the impact of an incursion of black Sigatoka on the organic banana industry was considered specifically in section 10.17.2 of Part B of the Final Bananas IRA Report.
- Therefore, the IRAAP concluded that there was **no significant deviation from the process set out in the Handbook that adversely affected the interests of a stakeholder (in this case G Grima & Co Pty Ltd).**
- As such, **the claim was disallowed.**

Queensland Department of Primary Industries and Fisheries

Ground of Appeal No. 2

Significant body of scientific information relevant to the outcome of the IRA was not considered.

CLAIM 1

Summary of claim

That the IRA team did not consider a significant body of scientific information relevant to the outcome of the IRA because:

- it failed to take adequate consideration of “the matter of contaminant pests such as arthropods, amphibians, reptiles and, particularly, tramp ants and mealy bugs which may enter Australia as hitch-hikers on imported banana consignments” and
- data based on risks associated with individual pineapples or mangoes had been inappropriately used to calculate risk for clusters of bananas.

Finding

Claim disallowed.

Reasons

- Conscious that it is outside the terms of reference to consider the scientific merits of an IRA (other than in relation to a claim that a significant body of scientific information was not considered), the IRAAP assessed whether the information identified by the appellant was a significant body of scientific information relevant to the outcomes of the IRA that had not been considered.
- The IRAAP was satisfied, on the basis of advice it received from Biosecurity Australia and information available on the public file, that the matter of contaminant pests had been considered by the IRA Team during the IRA process and is reflected in the Final Bananas IRA Report.
- Therefore, the IRAAP concluded that the **information had been considered and the claim was disallowed.**
- As the IRAAP found that this information had been considered, a detailed assessment of whether the appellant’s submission constitutes a significant body of scientific information relevant to the outcomes of the IRA was not necessary.

CLAIM 2

Summary of claim

That the IRA team did not consider a significant body of scientific information relevant to the outcome of the IRA because there was inadequate consideration of the potential impact on the environment if an exotic species of consequence was introduced through the import pathway. The appellant also noted that a lack of consultation with the Department of the Environment, Water, Heritage and the Arts (DEWHA) was identified by the Eminent Scientists Group (ESG) in its report on the Draft Final Bananas IRA Report.

The appellant specifically claimed that insufficient consideration had been given to the potential for Moko to spread to, and be sustained by, previously unsuspected hosts. The appellant also claimed that the assessment of the impact of black Sigatoka in Northern Queensland had not adequately taken into account the effect that increased chemical usage would have on the environment (particularly the Great Barrier Reef given the proximity of the banana industry), the human population and tourism industry.

Finding

Claim disallowed.

Reasons

- Conscious that it is outside the terms of reference to consider the scientific merits of an IRA (other than in relation to a claim that a significant body of scientific information was not considered), the IRAAP assessed whether the information identified by the appellant was a significant body of scientific information relevant to the outcomes of the IRA that had not been considered.
- The IRAAP was satisfied, on the basis of advice it received from Biosecurity Australia and information available on the public file, that the IRA team had considered the potential impact on the environment if an exotic species of consequence (including Moko disease) was introduced through the import pathway.
- The IRAAP also found, on the basis of advice it received from Biosecurity Australia and information available on the public file, that DEWHA was consulted during the IRA process.
- Therefore, the IRAAP concluded that the identified **information had been considered and the claim was disallowed.**
- As the IRAAP found that this information had been considered, a detailed assessment of whether the appellant's submission constitutes a significant body of scientific information relevant to the outcomes of the IRA was not necessary.

CLAIM 3

Summary of claim

That the IRA team did not consider a significant body of scientific information relevant to the outcome of the IRA because there was insufficient information to substantiate the risk management conditions proposed in the report and information supplied by the Philippines Government is inadequate and obsolete.

The appellant also claimed that a lack of information has resulted in risk mitigation measures that are reliant on the implementation of impractical procedures.

Finding

The claim does not fall within the grounds of appeal that can be considered by the IRAAP.

Reasons

- The IRAAP considered that, in this claim, the appellant is questioning the merits of the risk management recommendations rather than identifying a significant body of scientific information that it claims was not considered.

- The Handbook states:
“The IRAAP does not consider matters relating to:
 - *...the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia.”* (page 25-26).
- As such, the IRAAP concluded that the **claim was not within the grounds of appeal that can be considered by the IRAAP.**
- As the IRAAP determined that the claim was not within the grounds of appeal, a detailed assessment of whether the appellant’s claim constitutes a significant body of scientific information relevant to the outcomes of the IRA and whether or not that information was considered was not necessary.

Appellant

Bureau of Plant Industry, Department of Agriculture, Republic of the Philippines

Ground of Appeal No. 2

Significant body of scientific information relevant to the outcome of the IRA was not considered.

CLAIM 1, 2 & 3²

Summary of claims

That the IRA team did not consider a significant body of scientific information relevant to the outcome of the IRA which resulted in the final recommendations being overly stringent, particularly with respect to:

- the unrestricted probability of entry, establishment and spread of black Sigatoka via ascospores released from fertile psuedothecia embedded in infected leaf and floral material
- surface contamination of packed fruit with spores
- the need to test the efficacy of treatment to reduce numbers of fertile spores and psuedothecia.
- the likelihood of banana fruit as the source of moko primary inoculum
- freckle and bract mosaic virus (BMV), specifically the efficacy of treatments for freckle and the likelihood of transmission of BMV from symptomless fruit.

Finding

The claims do not fall within the grounds of appeal that can be considered by the IRAAP.

Reasons

- The appellant claims the “...*risk management measures proposed by Australia are very stringent with no regard to the prevailing growing conditions in the Philippines and the negative consequence to export fruit quality.... In general, the risk management measures proposed by Australia are very stringent, expensive and trade restrictive. The measures appear to be strategies to delay the commencement of banana export to Australia.*”
- The IRAAP considered that, in this claim, the appellant is questioning the merits of the risk management recommendations and the conclusions reached in the Final Bananas IRA Report rather than identifying a significant body of scientific information that it claims was not considered.
- The Handbook states:

“*The IRAAP does not consider matters relating to:*

 - ...*the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia.*” (page 25-26).
- As such, the IRAAP concluded that the **claim was not within the grounds of appeal that can be considered by the IRAAP.**
- As the IRAAP determined that the claim was not within the grounds of appeal, a detailed assessment of whether the appellant’s claim constitutes a significant body of scientific information

² Claims were considered together given similarity of the issues.

relevant to the outcomes of the IRA and whether or not that information was considered was not necessary.

- The IRAAP noted that much of the information identified by the appellant would be considered by Biosecurity Australia during the process for finalising import conditions.

Appellant

Australian Banana Growers' Council (ABGC)

Ground of Appeal No. 1

There was a significant deviation from the process set out in the Import Risk Analysis Handbook that adversely affected the interests of a stakeholder.

CLAIM 1

Summary of claim

That there was a deviation from the process set out in the Handbook because the Chief Executive of Biosecurity Australia failed to issue a recommendation for a policy determination that was separate from the conclusions and recommendations of the IRA team.

The appellant claimed its interests have been adversely affected by the alleged failure in that it:

- reduces the transparency of the IRA process;
- obfuscates the likely consequences of the adoption of the IRA recommendations as policy; and
- restricts ABGC's capacity to bring an appeal to the IRAAP.

Finding

Claim disallowed.

Reasons

- The IRAAP noted that section 19 (page 17) of the Handbook requires the Chief Executive of Biosecurity Australia to issue a Final IRA Report and a recommendation for a policy determination.
- In addition, the IRAAP noted that section 6 of Part A of the Final Bananas IRA Report explains the further steps in the IRA process and states that a recommended policy will be submitted to the Director of Animal and Plant Quarantine for a policy determination.
- The IRAAP concluded, therefore, that as an explicit recommendation for a policy determination had not been issued with the Final Bananas IRA Report, Biosecurity Australia had not fully met the requirements of the Handbook.
- Therefore, the IRAAP found that **there was a deviation from the process set out in the Handbook.**
- The IRAAP also noted the Biosecurity Australia Advice (BAA 2008/34) - Release of the Final Import Risk Analysis Report for Bananas from the Philippines, that was issued to all stakeholders and is available on the public file states, "*The final Banana IRA Report recommends that bananas could enter Australia if the Philippines meets strict risk management measures for seven groups of pests of quarantine concern, including moko, black Sigatoka and freckle.*"³
- The IRAAP found that Biosecurity Australia's recommendation for the conditional importation of bananas from the Philippines was also clearly set out in the overview in Part A of the Final

³ Biosecurity Australia Advice 2008/34 – Release of the Final Import Risk Analysis Report for Bananas from the Philippines, can be accessed from Biosecurity Australia's website, at:
http://www.daff.gov.au/__data/assets/word_doc/0009/888246/2008_34.doc

Bananas IRA Report. Also, the Chief Executive of Biosecurity Australia issued the Final Bananas IRA Report and accompanying BAA 2008/34 in his own name. Accordingly, the IRAAP concluded that **the deviation from the process was not a significant deviation**.

- The IRAAP further concluded that, since a full explanation of the recommendations was provided in the Final Bananas IRA Report and the conclusion was clearly articulated to stakeholders, the appellant's claims that the deviation reduced the transparency of the IRA process and obfuscated the consequences of adoption of the recommendations are not supported. Accordingly, the IRAAP concluded that **the deviation did not adversely affect the interests of the appellant (in this case the ABGC)**.
- As the deviation was not significant and did not adversely affect the interests of a stakeholder, **the claim was disallowed**.
- The IRAAP noted that a similar claim was made to the IRAAP from Apple and Pear Australia Ltd in relation to the Final NZ Apples IRA Report in 2006/2007. The IRAAP also noted that despite reporting that the recommendation for a separate policy determination should have been made clearly in the name of the Chief Executive of Biosecurity Australia, Biosecurity Australia had not adopted this recommendation in releasing the Final Bananas IRA Report.

CLAIM 2

Summary of claim

That there was a deviation from the process set out in the Handbook in that the IRA team failed to specify risk management measures in the Final Bananas IRA Report, with particular reference (but not limited) to measures to reduce risks associated with the entry, establishment and spread of moko, black sigatoka and freckle.

The appellant also claimed that its interests have been adversely affected by the alleged failure in that it prevents the appellant from understanding the outcome of the IRA—specifically the parameters for import.

Finding

Claim disallowed.

Reasons

- The Handbook requires that a Final IRA Report includes *"recommendations on the appropriate risk management options"* (page 16).
- The IRAAP found that IRA team recommended in the Final Bananas IRA Report a risk management and operational framework associated with the importation of bananas from the Philippines (Part B, page 293). Section 12.3 of Part B notes that risk management measures specific to each disease (including moko, black Sigatoka and freckle) are also discussed under their respective chapters of the Final Bananas IRA Report.
- The IRAAP noted that the Handbook does not specify a particular level of detail in recommending, parameters or conditions for import in a Final IRA Report. It also found that, in accordance with section 2.2 (page 6) of the Handbook, it is not the role of Biosecurity Australia to implement measures but rather to recommend conditions for importation.
- Therefore, the IRAAP concluded that there was **no significant deviation from the process set out in the Handbook that adversely affected the interests of a stakeholder (in this case the ABGC)**.
- As such, **the claim was disallowed**.

- The IRAAP noted that any consideration of the merits of such risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia are outside the IRAAP's terms of reference. However, the IRAAP suggested that Biosecurity Australia give consideration to the clarity with which risk management measures and recommendations are presented in future Final IRA Reports.

CLAIM 3

Summary of claim

That there was a deviation from the process set out in the Handbook in that the IRA team failed to place specific documents on the public file for the Bananas IRA on Biosecurity Australia's website.

The appellant also claimed its interests have been adversely affected by the alleged failure in that it prevented the appellant from gaining information to which stakeholders were entitled about technical, administrative and other matters relating to the IRA. In turn, the appellant claims this prevented it from making submissions on the basis of this information during the course of the IRA.

Finding

Claim disallowed.

Reasons

- The IRAAP noted that the Handbook requires that, *"At the commencement of each IRA, Biosecurity Australia establishes a public file to contain non-confidential submissions and other technical documentation. Each public file is held at Biosecurity Australia's office in Canberra. Documents may be accessed by appointment during business hours for perusal and copying, and information in electronic form is available to stakeholders on request. Stakeholders are encouraged to make submissions electronically to assist in maximising access to documents."*

Further details of the material to be placed on each public file are in Annex 6." (page 10).

Annex 6 to the Handbook states: *"At the commencement of each IRA, Biosecurity Australia establishes a public file to contain non-confidential submissions and other technical documentation. Each public file is held at Biosecurity Australia's office in Canberra. Documents may be accessed by appointment during business hours for perusal and copying, and information in electronic form is available to stakeholders on request. Stakeholders are encouraged to make submissions electronically to assist in maximising access to documents. Where appropriate, documentation on the public file which is in electronic form is available on the AFFA [now the Department of Agriculture, Fisheries and Forestry] website."*

The Handbook contemplates that not all the information on the public file will necessarily be included on the website, but states that "where appropriate, documentation on the public file which is in electronic form is available on the AFFA website." (annex 6, page 29).

- The IRAAP also noted the Biosecurity Australia Policy Memorandum 2006/27⁴ which was issued after the Handbook. It informs stakeholders that, *"Biosecurity Australia has now improved arrangements for public files by making our website the main access point for public file information. Electronic images of documents that previously could only be viewed on the file in*

⁴ Biosecurity Australia Policy Memorandum 2006/27 - Improved arrangements for access to public files of import risk analyses can be accessed from Biosecurity Australia's website, at: http://www.daff.gov.au/__data/assets/word_doc/0004/33763/2006_27.doc

Canberra are now to be available via the website. This improvement was implemented with effect from 1 July 2006.”

- Although Biosecurity Australia advised the IRAAP that the public file (available on the Biosecurity Australia website) is maintained in accordance with the Handbook, the IRAAP found that some of the documents identified by the appellant—such as the recommendation for a policy determination and an inventory of significant changes between the Draft and Final Bananas IRA Reports (both considered in relation to other claims by the appellant)—were not clearly included on the public file.
- As such, the IRAAP found that **there was a deviation from the process set out in the Handbook.**
- However, Biosecurity Australia presented the IRAAP with evidence that all significant and relevant technical information had been included on the public file. Further, it was noted that some documents listed by the appellant were not placed on the public file as they were either considered confidential or were working documents.
- On this basis, the IRAAP concluded **that the deviation from the process was not significant and had not affected the interests of a stakeholder (in this case the ABGC).**
- As such, **the claim was disallowed.**

CLAIM 4

Summary of claim

That there was a deviation from the process set out in the Handbook in that IRA had been conducted by Biosecurity Australia rather than an IRA team. The appellant also claimed its interests were adversely affected because of an alleged lack of sufficient plant pathology expertise, following the retirement of two members from the IRA team.

The appellant also claimed that its interests were affected in that it was denied the assurance that the Final Bananas IRA Report reflects the consensus view of a relevant expert group of scientists.

Finding

Claim disallowed.

Reasons

- The IRAAP noted the details of the terms of reference, operating procedures and considerations for membership of an IRA team are included at Annex 2 of the Handbook. Annex 2 states that “*A team of experts conducts import risk analyses. The outcome of the IRA team’s work is a Final IRA Report containing recommendations for consideration by the Executive Manager of Biosecurity Australia*” (page 21). Annex 2 further states: “*Team members collectively provide an appropriate combination of experience and expertise in:*
 - *Risk analysis as it relates to biosecurity;*
 - *Science and regulation;*
 - *Animal and/or plant pests and diseases;*
 - *Industry and/or commercial processes and practices; and*
 - *Other disciplines relevant to the proposal or application under consideration.*” (page 21).
- The IRAAP found that the IRA was conducted by an IRA team and that the IRA team had produced the Final Bananas IRA Report, however, that fact should have been more clearly communicated in Biosecurity Australia Advice 2008/34 - Release of the Final Import Risk Analysis Report for Bananas from the Philippines.

- The IRAAP was also satisfied, on the basis of evidence provided to the IRAAP by Biosecurity Australia, that there was sufficient plant pathology expertise within the IRA team for the duration of the process.
- Therefore, the IRAAP concluded that there was **no significant deviation from the process set out in the Handbook that adversely affected the interests of a stakeholder (in this case the ABGC).**
- As such, **the claim was disallowed.**

CLAIM 5

Summary of claim

That there was a deviation from the process set out in the Handbook in that the IRA was improperly conducted and finalised despite the Philippines Government (the proponent) not providing adequate information to enable risk management measures to be specified in the Final Bananas IRA Report.

The appellant claimed its interests have been adversely affected because has been unable to assess what, if any, risk management measures are appropriate and because it has not had an opportunity to scrutinise and test the information supplied by the Philippines Government.

Finding

Claim disallowed.

Reasons

- The IRAAP noted the Handbook states that: *“At the time a proposal or application requiring an IRA is lodged, it need not contain the detail required for Biosecurity Australia to commence work. However, before a specific risk analysis is commenced, Biosecurity Australia may seek information from the proponent, including technical information to confirm the purpose and scope of the proposal.”* (page 11, emphasis added).
- The Handbook also provides, *“After an IRA team is established, it liaises with the proponent/applicant about technical information needed to enable the IRA to proceed. If there is insufficient information, the IRA may be delayed until the information is received.”* (page 14, emphasis added).
- The IRAAP was satisfied, on the basis of evidence it received from Biosecurity Australia, that the IRA team did meet the requirements of the Handbook with regard to information provided by the proponent.
- Therefore, the IRAAP concluded that there was **no significant deviation from the process set out in the Handbook that adversely affected the interests of a stakeholder (in this case the ABGC).**
- As such, **the claim was disallowed.**

CLAIM 6

Summary of claim

That there was a deviation from the process set out in the Handbook in that the IRA team failed to release a further revised Draft Bananas IRA Report for comment despite significant changes to its analysis and substantive changes between the (revised) Draft and Final Bananas IRA Reports.

Finding

Claim disallowed.

Reasons

- The IRAAP noted that the Handbook states, “*If new information comes to light that may significantly affect the analysis, or if the IRA team identifies the need to make significant changes to the analysis in finalising the IRA Report, the IRA team, in consultation with the Executive Manager of Biosecurity Australia, may consider whether it would be appropriate to prepare a revised Draft IRA Report for stakeholder consultation.*” (page 16, emphasis added)
- The IRAAP noted that, during the life of the IRA, three Draft Bananas IRA Reports were issued for stakeholder comment and that, as noted above, it is not a requirement of the Handbook to reissue a Draft IRA Report for comment but is a discretionary issue for the IRA team in consultation with the Chief Executive of Biosecurity Australia.
- The IRAAP was therefore satisfied, on the basis of evidence it received from Biosecurity Australia and information available on the public file, that there was **no significant deviation from the process set out in the Handbook that adversely affected the interests of a stakeholder (in this case the ABGC).**
- As such, **the claim was disallowed.**

CLAIM 7

Summary of claim

That there was a deviation from the process set out in the Handbook in that the IRA team failed to include certain material in the Final Bananas IRA Report, namely:

- the IRA team’s responses to issues raised; and
- an inventory of any significant changes to the Draft Bananas IRA Report, with reasons for the changes.

The appellant claimed that it was adversely affected by the deviation because it was unable to ascertain the IRA team’s response to the submissions received on the Draft Bananas IRA Report.

Finding

Claim disallowed.

Reasons

- The IRAAP noted that the Handbook states, “*The Final IRA Report draws all issues together and includes:*
 - *the IRA team’s responses to any issues raised*
 - *an inventory of any significant changes to the Draft IRA Report, with reasons for those changes...*” (page 16).
- The IRAAP found that there **had been a deviation from the process set out in the Handbook**, in that the IRA team’s responses to issues raised and an inventory of any significant changes to the Draft Bananas IRA Report were not clearly reported in the Final Bananas IRA Report.

- However, sufficient information—including the report of the Eminent Scientists Group⁵—was presented to the IRAAP to conclude that IRA team had considered stakeholder submissions received on the Draft Bananas IRA Report.
- The Eminent Scientists Group noted that there were 21 submissions made by stakeholders on the Draft Bananas IRA Report relating to a range of issues. The Eminent Scientists Group Report stated:

"BA has responded to these issues [contained in stakeholder submissions] where appropriate by including additional information in the August 2008 draft final banana IRA report and by making revisions to the draft text. The ESG considers that the responses made by BA to the issues raised, especially in relation to Moko disease, are of a high quality and carefully address the concerns of the stakeholders."

 - The Eminent Scientists Group report concluded that, beyond specifically identified areas where technical responses (while sufficient) could have been more comprehensive, further clarification could have been provided regarding the withdrawal of a minority report by an IRA member and greater detail should be considered regarding the development of protocols for the implementation of the IRA recommendations, the IRA team had properly considered the 21 submissions received from stakeholders on the Draft Bananas IRA Report.
- It was also apparent to the IRAAP that responses to stakeholder submissions and an explanation of significant changes from the Draft Report had been included throughout the Final Bananas IRA Report and highlighted in the Biosecurity Australia Advice 2008/34 issued when the report was released.
- As such, the IRAAP concluded that **the deviation was not significant and did not adversely affect the interests of a stakeholder (in this case the ABGC).**
- As such, **the claim was disallowed.**

CLAIM 8

Summary of claim

That there was a deviation from the process set out in the Handbook in that Biosecurity Australia did not consult with the chief executives of relevant state and territory government agencies in relation to the proposed outcomes of the IRA and aspects of joint responsibility arising from the recommendations. The appellant claimed that its interests have been adversely affected by the alleged failure in that it prevented these agencies from providing input which would have affected the standard of the analysis in the IRA.

Finding

Claim disallowed.

Reasons

- The IRAAP noted that the Handbook states, *"Biosecurity Australia consults the chief executive officers of relevant State and Territory agencies on the proposed outcomes of the IRA, including regional pest status and risk issues, and aspects of joint responsibility arising from the IRA team's recommendations. The Executive Manager of Biosecurity Australia may refer the report to the IRA Team for further consideration if this is deemed necessary as the result of this consultation."* (page 17)
- The IRAAP was satisfied, on the basis of evidence it received from Biosecurity Australia and information available on the public file, that Biosecurity Australia had consulted with the chief

⁵ The Eminent Scientists Group report can be accessed at:
http://www.daff.gov.au/biosecuritycoordination/eminent_scientists_group

executives of relevant state and territory governments in relation to the proposed outcomes of the IRA and aspect of joint responsibility arising from the recommendations during the IRA process.

- Therefore, the IRAAP concluded that there was **no significant deviation from the process set out in the Handbook that adversely affected the interests of a stakeholder (in this case the ABGC).**
- As such, **the claim was disallowed.**

Ground of Appeal No. 2

Significant body of scientific information relevant to the outcome of the IRA was not considered.

CLAIM 9

Summary of claim

That a significant body of scientific information relevant to the outcome of the IRA was not considered because the IRA team failed to consider a significant body of scientific information relevant to the modelling of short and long range wind-based dispersal of fungal spores.

Finding

Claim disallowed.

Reasons

- The IRAAP considered the scientific information presented by the appellants in relation to wind dispersal and determined that the evidence was only a subset of all the relevant literature available on the matter. The IRAAP concluded that the information **could not be considered a significant body of science relevant to the outcomes of the IRA and the claim was disallowed.**
- As the IRAAP's view was that the information did not constitute a body of scientific information, a detailed assessment of its relevance and whether it had been considered during the IRA process was not necessary.
- However, the IRAAP noted that, on the basis of evidence it received from Biosecurity Australia and the content of the Final Bananas IRA report itself, that Biosecurity Australia had considered the matter of "wind dispersal" during the IRA process.