

***THE GOVERNMENT RESPONSE TO THE NATIONAL COMPETITION  
POLICY REVIEW OF THE EXPORT CONTROL ACT 1982***

The Government has pleasure in endorsing the Report of the National Competition Policy (NCP) Review, and has issued instructions to Agriculture Fisheries and Forestry Australia to implement the Report's recommendations, as specified in this document.

This document is set out under the following heads.

Summary of Review Committee Deliberations

Introduction

Background on the operation of Export Assurance

Detailed Response

The Government accepts that the continued existence and operation of the *Export Control Act 1982* is central to the continued health of Australia's agricultural export industries and to the nation as a whole. The benefits of the legislation, as the Report has shown, far outweigh the costs.

## **SUMMARY OF COMMITTEE DELIBERATIONS**

The *Export Control Act* authorises restraints on business engaged in export. The Review Committee was required to assess the extent to which the restraints affect competition within the individual export industries, and the competitiveness of Australia's export industries overseas. Costs and benefits were also to be assessed. Using the outcome of these assessments, a third task was to make judgements on retention of the legislation and, if positive, to recommend changes which would improve effectiveness and maximise consistency with NCP principles.

The Committee strongly recommended retention of the Act, because of the benefits which accrue to Australia through its operation. However, there are recommendations for amendments to the Act and changes to the way it is administered.

The key objective of the latter recommendations is to set a direction for the administration of all programs so that they accord with NCP principles, and are based on active cooperation between government and individual industries.

## INTRODUCTION

The food export industry is very important to Australia as a whole, and regional Australia in particular. A considerable amount of Australia's export income is earned from food exports, and the Government has a prominent role in providing assurance for those exports to assist in monitoring and expanding overseas markets.

The *Export Control Act* is primarily used to ensure that exported food is wholesome and has been prepared under hygienic conditions. However, over the years, it has been used to ensure that other conditions relating to trade are satisfied. These include trade and product descriptions, volume limitations and other requirements imposed by overseas governments for access to their markets. A key issue for the Committee was to examine the conditions under which the Act and its enabling powers should be used, and to define appropriate areas for commercial responsibility and Government regulation.

While it is essential to ensure that the program is carried out effectively, it is also essential to ensure that it is carried out in an efficient and non-discriminatory manner. The costs of inefficiencies in assuring the safety of food exports will disadvantage industry and flow on to the economy in general. Additionally, the financial burden of any inefficiency in the regulatory system will adversely affect the regional businesses (and their employees) which depend on exports for their viability.

To ensure that export assurance operates in a manner which is both effective and efficient and as part of the process of dismantling any unnecessary regulatory barriers, while boosting the competitiveness of Australian business, the Government commissioned a National Competition Policy (NCP) Review of the *Export Control Act 1982*.

It should also be noted that this review was carried out at a time of major change for food safety regulation both within Australia and internationally. Additionally, there is continuing rapid growth in the world food trade along with increasing consumer concern about food safety issues. The review committee had to take these matters into consideration in ensuring that its recommendations were consistent with Australia's international obligations and trade objectives.

The direction recommended by the Report is for exports to be based on Australian standards, enabled by a true partnership between Government and industry, with single-body certification by Government, where this is required by importing countries.

A shared vision and a strong partnership are central to industry and to Government administration of the Act, to ensure fair and committed application of the Act's provisions, consistent with its objectives. Implementation and monitoring of activities under the Act must reflect the shared purpose and commitment to uphold the reputation of Australian goods exported with the full endorsement of the Act.

Impetus for change is found in the recommendations, which advocate retention of the *Export Control Act*, but with amendments to more closely reflect NCP principles and the partnership process with stakeholders. These include:

- adoption of an integrated export assurance system based on 3 tiers:
  - Tier 1: Australian Standards harmonised with International Standards/Agreements (Codex, OIE, IPPC).
  - Tier 2: Importing country conditions not covered by Australian Standards
  - Tier 3: Emergency or special requirements by industry or Government,
- setting of appropriate objectives for the Act to promote clarity of purpose and measurability,
- harmonisation of domestic and export standards for the production of food and agricultural products,
- export certification by a single Government based agency,
- contestability of monitoring, auditing and inspection,
- extending the focus of the Act through the entire food chain, and
- government and industry co-responsibility for strategy and program priorities.

The report arising from this review has been published and the Government has carefully considered the 14 recommendations it contains. All the recommendations are supported. The specific AQIS Advice on the Government Response to each is provided below.

The Report has strong support from industry, and State administrations have agreed at Primary Industries Ministerial Council (PIMC), formerly ARMCANZ, to work constructively toward implementing a better system for export assurance.

## **BACKGROUND ON THE OPERATIONS OF EXPORT ASSURANCE**

AQIS facilitates exports of Australian products through the provision of inspection and certification services, which address the requirements of importing country authorities. The provision of these services by AQIS requires an adequate legislative base.

Exporters and AQIS operate within the international framework defined by the limiting factors of quotas, tariffs and technical requirements, and by the manner in which importing countries choose to apply their domestic legislation. The extent to which individual importing countries frame their legislation to reflect World Trade Organisation (WTO) principles, international standards, treaty obligations, bilateral agreements and multilateral trade agreements is variable.

Successive Australian Governments have recognised the need for export controls and the value of export facilitation measures through the provision of inspection and certification services. Under the Government's Reform Agenda set out in its 1996 election manifesto, AQIS is charged with assisting industry via:

- export facilitation
- industry based (AQIS audited) quality assurance programs
- greater use of third party inspection/certification
- a more business like culture including a trimmer inspection force, increased accountability to, and consultation with, industry and
- maintaining scientific excellence.

Recognising that Australian exporters are competing in demanding international markets, the Government reduced AQIS export charges by 40% on 1 November 2001. The lower charges were aimed at producing significant savings for export industries which should underpin further investment in export industries and regional areas.

Only certain export goods are made subject to the operation of the Act. Currently, "prescribed goods" include meat (including game, poultry and rabbit), dairy products, fish (including crocodile meat), eggs and egg products, dried fruit, mung beans, grains, plants and plant products, processed fruit and vegetables, fresh fruit and vegetables, live animals and animal reproductive material, and products labelled as organic. Each prescribed good or class of prescribed good under the Act has a set of specific commodity Orders made pursuant to the *Export Control (Orders) Regulations*. Common requirements for all prescribed goods are set down in the *Prescribed Goods (General) Orders*.

Commodity specific Orders provide for establishment specifications (construction, equipment, facilities etc), inspection procedures, operational requirements (good manufacturing practice, hygiene measures, processing standards, etc), HACCP and quality assurance arrangements, trade descriptions and product standards. Specific commodity orders aim to reflect, as much as possible, relevant international requirements and standards.

The intended effect of these tiers of export control legislation is to ensure that prescribed goods, when exported, are safe and fit for human consumption, are accurately described (truth in labelling) and comply with relevant technical requirements of importing countries.

## **EXPORT CONTROL ACT: NATIONAL COMPETITION POLICY REVIEW - RESPONSE**

The *Export Control Act* was enacted in 1982 as a response to problems, stemming from the export to the USA of kangaroo and horsemeat labelled as beef. Limited quantities of meat prepared as pet food also entered the export chain. A specially established Royal Commission concluded that malpractice in the nature of commercial cheating has been widespread in the export industry. The crisis created a public outcry in Australia. A severe loss of confidence by overseas countries in Australia's inspection arrangements seriously threatened continued access for Australian meat to the US and UK markets, and reflected adversely on the status of the Australian Government's guarantee for all exports of food and agricultural products, not just meat. This review has provided the opportunity to examine the current status and effectiveness of export assurance in Australia and to recommend improvements to the process.

The Government endorses the recommendations made in the review report. The task will now be to refine some of the general principles into practical working solutions that maintain the integrity of the program and the level of assurance required by Australia's customers whilst increasing flexibility and efficiency for industry. Implementing the recommendations in a consultative manner will allow the program to adopt a more focussed approach and concentrate regulatory activities in areas of most need.

Outlined below are each of the specific review recommendations (in bold) along with the Government's response, based on stakeholder comments.

### **RECOMMENDATION 1: RETENTION OF THE ACT**

**The Review Committee recommends that:**

- 1.1 the Export Control Act be retained, in its current form, and with its current general structure,**
- 1.2 the title of the Act to be changed to the 'Export Assurance Act',**
- 1.3 specific amendments be made in the areas of: the objectives of the Act; the scope of the legislation; adoption of a three-tier system of export assurance; and, legislative monitoring, as outlined in other Recommendations in this Report, to ensure that the Act properly conforms to the NCP and is relevant to current export requirements.**

### **GOVERNMENT RESPONSE**

Agreed. The Government strongly endorses the retention of the Act, particularly in view of the requirements of the various countries to which Australia exports. The Act gives a clear focus, its requirements are transparent, and Parliament has an active oversight on behalf of the nation.

Government certification is a prerequisite to gain entry to most overseas markets for most food and agricultural products. This Act provides the legislation to support Government certification. The Review Committee has established that the benefits of the Act are far greater than the costs.

Stakeholders strongly support the retention of the Act.

AQIS has been instructed to prepare the legislative amendments.

## **RECOMMENDATION 2: OBJECTIVES OF THE LEGISLATION**

**The Review Committee recommends that the Act be amended to include a statement of specific objectives.**

### **GOVERNMENT RESPONSE**

Agreed. It is Government policy to clearly specify the objectives of Commonwealth legislation.

The Act has no specifically stated objectives. Inclusion of objectives will bring the legislation up to date, make its purpose clear and enable a proper basis to be established for performance measurement purposes.

The objective recommended by the Committee is:

The objective of future export control legislation is to facilitate, enhance and sustain Australia's exports by providing authority for the imposition of systems which:

- ensure compliance with overseas country requirements, and
- ensure compliance with any other standards established through government/industry consultation on the basis of net public benefit.

The two elements of this objective are strongly interrelated. There are 'flow-on' considerations encapsulated in the above, such as ensuring public health and safety, covering market failure, observing relevant international agreements, authorising appropriate control and assurance arrangements and guaranteeing that overseas requirements will be met.

The objectives should be of such a nature as to provide an effective basis for the establishment of measurement criteria (see Recommendation 10).

Development of specific objectives for individual programs should be part of the consultative process between Government and industry.



### **RECOMMENDATION 3: ADOPTION OF AN INTEGRATED EXPORT ASSURANCE SYSTEM (THREE TIER MODEL)**

**The Review Committee recommends that programs established under the Export Control Act be administered under the following three tier model comprising:**

- **Australian Standards (Tier 1),**
- **Standards set by overseas governments for access to their markets (Tier 2),**
- **Market-specific requirements (Tier 3).**

#### **GOVERNMENT RESPONSE**

Agreed. The current model is full of competitive distortions. It lacks sufficient clarity, transparency and ease of comprehension for all involved. The Government is committed to full consultation during this process, so that any changes made constitute a real benefit to the export industries, and to Australian food and agricultural industries as a whole.

**Tier 1:** The Act ensures compliance of Australian agrifood exports with basic, internationally agreed public health, animal health and phytosanitary requirements, as defined by Codex, OIE and IPPC and accorded special status under the WTO SPS Agreement. However, this approach will not suit all circumstances because:

- there are not Codex/OIE/IPPC standards relevant to every situation and
- WTO Members and non-Members alike are in any event entitled to impose different and/or stricter requirements if they wish (subject to certain disciplines in the case of the WTO Members).

All food and agricultural product manufacturers would have to comply with these basic standards.

**Tier 2:** In order to facilitate access for Australian agrifoods to these markets, the Act must provide for the application of additional (or different) requirements by importing countries. It is necessary to provide powers to reflect the outcome of market access conditions arrived at through negotiation with individual importing country authorities, increasingly reflecting the outcomes of equivalence determinations made by those authorities.

Only producers/ manufacturers wishing to supply such markets would be required to comply with these additional standards.

**Tier 3:** There is also a need to accommodate under the Act situations where exporters or industry organisations request additional government regulation in order to support their export marketing needs. In this regard, a key test for applying this objective to the content of commodity specific orders should be industry agreement after alternative models have been considered and rejected.

#### **RECOMMENDATION 4: HARMONISATION OF DOMESTIC AND EXPORT STANDARDS**

**The Review Committee recommends that domestic and export standards for the production of food and agricultural products in Australia be harmonised, and that they be consistent with relevant international standards.**

##### **GOVERNMENT RESPONSE**

Agreed. The Government strongly supports the harmonisation of domestic and export standards. This initiative has been the subject of recommendations in the past from the Report of the Food Regulation Review ('Blair' Report) which recommended amongst other items an integrated and co-ordinated food regulatory system to reduce the existing duplication of regulation. The recommendations from this review are currently being actively addressed by State and Commonwealth Governments.

Australian industry should be encouraged to produce for a global market with health, hygiene and product standards built into production systems. Australia already plays a key role in the WTO standard setting bodies of the Office International des Epizooties (OIE), Codex and International Plant Protection Convention (IPPC). Australian delegations work hard to ensure that guidelines, codes of practice and standards for international trade developed by these bodies are consistent with domestic practices, or the directions in which our agricultural industries are proceeding. Review of international and export standards to ensure consistency and harmonisation of export and domestic standards will facilitate entry into export markets and increase Australia's potential for export earnings. It should be noted that State and Commonwealth Governments and industry are already pursuing harmonisation of standards for the production of domestic and export meat, through a revised *Australian Standard for the Hygienic Production and Transportation of Meat and Meat Products for Human Consumption*.

Trade is a two-way street, and by aligning Australia domestic production closely with minimum world standards, we will create opportunities to take advantage of our efficient agricultural and food industries. There has been strong stakeholder support for harmonisation.

At the same time, implementation will be a sensitive, consultative process which arrives at sustainable solutions of benefit to Australia's export and agricultural industries, and to the community as a whole.

#### **RECOMMENDATION 5: CERTIFICATION BY A SINGLE AUTHORITY**

**The Review Committee recommends that certification of Australian export products continue to be administered by a single government based agency.**

##### **GOVERNMENT RESPONSE**

Agreed. The Government, recognises the value of consistency and the clear identification of a single certifying authority for Australia's trading partners. Accountability and transparency are assisted by this process. Overseas countries are

dealing with a known and integrated system. The agreed conditions may allow for shared responsibility between Government, industry or third parties for monitoring of export performance, but a single certifying authority is a standard requirement. There is thus no scope to introduce contestability into this role.

A single system allows Australia to get on with what it does best – producing top-quality food efficiently, and exporting the surplus.

#### **RECOMMENDATION 6: CONTESTABILITY OF MONITORING, AUDITING AND INSPECTION**

**The Review Committee recommends that monitoring and inspection arrangements be made fully contestable under all programs as soon as third party arrangements are acceptable to overseas governments.**

#### **GOVERNMENT RESPONSE**

Agreed. Contestability of functions has resonance with National Competition Policy, and is also a Government policy. This is being embraced as far as it is consistent with the requirements of countries importing from Australia. Discussions and interaction with our trading partners is constantly in progress.

The traditional system for measuring performance has been to rely solely on Government engaged inspectors. The ideal future model is to allow third parties to provide the service and full contestability on open competition between service providers.

The contestability should not extend to the function of certification. The Government has a firm view that certification should continue to be undertaken by AQIS.

#### **RECOMMENDATION 7: SCOPE OF THE LEGISLATION**

**The Review Committee recommends that the focus of the Act extend through the entire food chain and not rely primarily on the product preparation stages immediately prior to export, as occurs at present.**

#### **GOVERNMENT RESPONSE**

Agreed. This recommendation should be read in conjunction with Recommendation 4 and reflects those other issues of product preparation such as residues and contaminants that are treated differently during the preparation of domestic and export product. Recommendation 7 also reflects the approach that the European Union takes to the whole food chain process when auditing the Australian food inspection system, and the approach Australian agriculture needs to take despite the different Government systems in each state. Essentially the Australian agrifood industry needs to have an export vision so that, should an opportunity arise to enter a new market or to increase market share in an existing market, Australian farmers are able to capitalise on the situation should they so wish. Government assistance and

Government-industry partnerships, rather than increased Government regulation, are seen as the most appropriate processes for progressing this recommendation.

For this reason the Government announced a five year plan, known as the National Food Industry Strategy, to assist the Australian food industry (horticulture and food processing) to develop 'through chain systems', prepare for these international opportunities and also increase international market share. The \$102.4 million provided for this plan is for the development of strategies to ensure that the Australian food industry remains competitive and profitable despite the effects of trade liberalisation, e-commerce, global supply chains, changing consumer demands and growing environmental concerns. One of the key elements of the strategy is to build more competitive supply chains and improve national food safety and quality systems.

In recent years, there has been increased consumer awareness that product safety risks extend through the food preparation chain and are not confined to the preparation, handling and storage of end products. This awareness has prompted greater interest in all stages of product preparation. The notable examples of such awareness and response have been the ban by a number of countries on beef from cattle fed on meat meal originating in BSE-infected countries and consideration of appropriate rules to regulate genetically modified foods.

The emerging outcome is a call by governments for new controls on the origin of products and validation of standards set for each processing step. The concepts covered in Recommendation 4 are relevant. The controls need not, however, be met in the form of increased Government regulation.

The use of company and industry-based management systems contribute to the overall level of assurance and reflect good management practices while often also reducing the need for regulation and additional Government inspection regimes. By allowing for extension of management systems through the food chain, benefits are derived from visibly securing the 'whole of chain' process and increasing the confidence felt by governments and consumers in importing countries.

With the increasing opportunity for domestic product to become eligible for export, it becomes extremely important that those issues that affect the 'whole of the chain' are addressed satisfactorily. These issues will not necessarily be identified by end point inspection alone.

#### **RECOMMENDATION 8: CRITERIA FOR APPLICATION OF LEGISLATION**

**The Review Committee recommends that specific criteria for the application of the Act be prepared in consultation with industry.**

#### **GOVERNMENT RESPONSE**

Agreed. It is the Government's duty to its stakeholders to implement clear, consistent and transparent processes for the management, enactment and administration of legislation. If industry is operating in a known environment, it can plan with more confidence for the future.

The criteria should include:

- a protocol for implementing the process of prescription under the Act;
- a protocol for reviewing goods prescribed under the Act;
- a protocol for product coverage under the Act; and
- arrangements for consultation with industry.

#### **RECOMMENDATION 9: CERTIFICATION OF NON-PRESCRIBED GOODS**

**The Review Committee recommends that only prescribed goods be certified under the Act.**

#### **GOVERNMENT RESPONSE**

Agreed. Certification has often been used as a tool for market access for other than health and safety reasons. However, this process needs to be transparent. If a product is important enough to certify, it should be prescribed.

#### **RECOMMENDATION 10: REVIEW OF INDIVIDUAL PROGRAMS AGAINST NCP PRINCIPLES**

**The Review Committee recommends that QEAC establish a program of periodic monitoring of the operation of regulation, particularly in economic terms, ensuring that:**

- **the activity under the Act and its administration are measurable against its objectives,**
- **the Act be periodically monitored in relation to the net benefit it confers.**

#### **GOVERNMENT RESPONSE**

Agreed. It is important that the achievements of the legislation are measurable against its objectives. It is also important that the legislation aligns with Government policies, such as the National Competition Policy.

Monitoring of regulation, its administration and its effects, is required as circumstances change over time. It is important that subordinate legislation in particular be subject to regular scrutiny by the responsible Government authority, in consultation with stakeholders. It is Government policy to review subordinate legislation regularly to determine its current relevance.

### **Recommendation 11: Accelerate the Current Review of Existing Subordinate Legislation**

**The Review Committee recommends that the current review of subordinate legislation should be accelerated, and conducted with reference to the principles expressed in this Report, in particular, reflecting the partnership between Government and Industry, and the assumption of greater industry responsibility.**

#### **GOVERNMENT RESPONSE**

Agreed. A review program for subordinate legislation has been established, and is progressing well.

The legislative and program changes will take account of other reforms, such as those stemming from the Report of the Food Regulation Review (the 'Blair' Report).

### **RECOMMENDATION 12: CO-RESPONSIBILITY FOR STRATEGY AND PROGRAM DELIVERY**

**The Review Committee recommends that:**

- 12.1 a Development Committee be established for each program,**
- 12.2 membership of the Committee comprises representatives of AQIS and Industry,**
- 12.3 the Committees operate independently and be charged with the specific responsibility to**
  - determine strategies**
  - establish priorities, and**
  - approve plans for their implementation,**
- 12.4 QEAC review the performance of these committees biennially and report to the Minister against the adopted plans.**

#### **GOVERNMENT RESPONSE**

Agreed. The existence of strong and vital consultative mechanisms is the cornerstone of successful service to industry.

Under existing arrangements individual programs are monitored by Consultative Committees comprising representatives of AQIS and the relevant industry. These Committees will be given more responsibility for policy developments and program delivery. Particular focus will be placed on strategies and priorities to facilitate trade through improved access to individual markets.

A first step for the newly established committees should be an assessment of each program against the vision and assurance model outlined in this Report.

The existing Ministerial council, the Quarantine and Exports Advisory Council (QEAC), with appropriately broad-based representation, is the appropriate organisation to oversight the effective discharge of this process.

### **RECOMMENDATION 13: ELECTRONIC COMMERCE**

**The Review Committee recommends that AQIS move quickly to align the administration of the regulation with current Government policy on electronic commerce, recognising in particular:**

- 13.1 advantages in establishing more easily accessible information bases and information services for stakeholders on such issues as importing requirements and microbiological testing**
- 13.2 the benefits of placing a greater emphasis on electronic commerce, particularly given government policy on this issue**

### **GOVERNMENT RESPONSE**

Agreed. The Government regards the implementation of electronic initiatives as of prime importance because of their capacity to promote efficiency and effectiveness gains in business, and the process is being actively fostered. It is also recognised that there are some sectors and companies not in a position to utilise these systems and their needs must also be considered.

Accessibility to information that may change frequently is an issue for current or potential exporters. Competitiveness depends, in part, on the ability of industry and individual businesses to identify and respond to opportunities. Electronic commerce and information systems are best able to deliver optimum levels of information accessibility.

### **RECOMMENDATION 14: IMPLEMENTATION**

**The Review Committee recommends that the outcome of this Review and its Recommendations be included as part of the COAG policy on the reform of food regulation, and further that:**

- 14.1 AFFA/AQIS progress the recommendations in this context by developing an implementation plan with milestones for achievement over the next five years. The plan must show substantial changes occurring within 18 months,**
- 14.2 The Minister establishes a reporting framework for progress on implementation of recommendations taking into account the role of other government bodies, apart from AQIS. Implementation of the Committee's vision depends on securing commitment from Commonwealth bodies such as ANZFA and all State and Territory Governments,**
- 14.3 ARMCANZ oversight implementation of the Three Tier model and facilitate harmonisation of State/Commonwealth standards for each industry or program area encompassed by the *Export Control Act*.**



## **GOVERNMENT RESPONSE**

Agreed. The Government has requested AQIS to prepare an implementation plan with suitable reporting points. Periodic reports have been requested and implementation will be actively monitored.