

**Annual Review of Regulatory Burdens on
Business – Primary Sector**

Submission

**The Department of Agriculture, Fisheries and
Forestry**

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Overview

Interest in the Review of Regulatory Burdens on Business – Primary Sector

The Australian Government Department of Agriculture, Fisheries and Forestry (the Department) welcomes the opportunity to provide a submission to the Productivity Commission's (PC) Annual Review of Regulatory Burdens on Business – Primary Sector. The Department has a keen interest in ensuring that the concerns of its portfolio industries relating to regulatory and compliance burdens are appropriately addressed.

The agriculture, fisheries, forestry and food industries continue to be an important part of Australia's primary sector and many communities, particularly in rural and regional areas, depend on these industries. Agricultural, fisheries and forestry products contribute about one-fifth of the value of Australia's merchandise exports, with projected earnings of around \$30 billion in 2006-07, despite the drought. Sixty per cent of the country's land mass is devoted to agriculture, with 120,000 commercial farms and 386,000 people employed in agriculture and over 187,000 in food and beverage processing.

There are a diverse range of agriculture and food industries which vary in size, structure and operation. Australia's main agricultural industries include beef, wheat and other grains, horticulture, dairy, wool, sheep, wine grapes, poultry, pork, sugar, cotton and rice. Most industries have undergone significant reform over the past several decades, often through a combination of deregulation, the removal of trade and/or price protection, technological and agronomic developments, and farm sector rationalisation. While this has largely resulted in a more competitive, profitable and sustainable sector, a number of regulatory issues continue to affect Australia's agriculture, fisheries, forestry and food producers and industries. Establishing an operating environment that does not impose unwarranted or unnecessary regulatory and compliance burdens is critical to the future competitiveness of portfolio industries.

Role and Functions of the Department of Agriculture, Fisheries and Forestry

The Department is involved in a broad spectrum of issues and activities, including the development and administration of regulations. The Department aims to:

- help Australian agricultural, food, fisheries and forestry industries become more competitive, profitable and sustainable;
- enhance the natural resource base on which these industries rely;
- deliver scientific and economic research, policy advice, programmes and services to help deal with the challenges faced by agricultural, food, fisheries and forestry industries;
- address issues relating to the integrity of Australia's food supply chain, from producer to processor to the consumer;
- safeguard the integrity of Australia's animal (including aquatic animals), plant and fish (including crustaceans and shellfish) health status;
- uphold quarantine, export inspection and certification and food safety standards activities, essential for maintaining Australia's highly favourable animal and plant health status; and
- improve trading opportunities for Australian agriculture and food industries, while protecting Australia's plant and animal health and environment.

The Department includes businesses units that provide specialist services to portfolio industries such as the Australian Quarantine and Inspection Service (AQIS), the Australian Bureau of Agricultural and Resource Economics, and the Bureau of Rural Sciences. There are a number of regulatory authorities, statutory marketing authorities, Research and

Development Corporations and advisory bodies within the portfolio. Biosecurity Australia is a prescribed agency within the Department.

The regulatory authorities within the portfolio are:

- the Australian Fisheries Management Authority (AFMA) - responsible for ensuring the sustainable use and economically efficient management of Commonwealth fisheries resources. AFMA provides management, advisory, compliance and licensing services and develops appropriate operational policies and regulations;
- the Australian Pesticides and Veterinary Medicines Authority (APVMA) - assesses, registers and regulates agricultural and veterinary chemical products up to, and including, the point of retail sale; and
- the Wheat Export Authority (WEA) - the statutory authority established to undertake the regulatory functions associated with the national wheat single desk export arrangements.

Regulatory Environment

The wide range of portfolio industries and responsibilities creates a highly complex operating and regulatory environment. This submission outlines some of the key areas of complexity for Departmental stakeholders. The Department is aware of the concerns industry has raised about unnecessary compliance and other burdens and costs associated with government regulations affecting portfolio industries. These include agricultural and veterinary chemicals and fertilisers regulation, wheat marketing arrangements, the mandatory Horticulture Code of Conduct, the food regulatory framework, accessing Exceptional Circumstances support, quarantine and export controls, animal welfare standards and environmental regulations. This submission discusses these and a number of other regulatory areas in the agriculture, fisheries and forestry portfolio.

The Australian Government supports a policy approach which encourages minimal government regulation and intervention. Specifically in relation to the agriculture portfolio, this was reinforced in the Government response to the report of the Agriculture and Food Policy Reference Group, *Creating Our Future* (the Corish Report) and the 2007 Agriculture Statement, *Future Harvest*, which outlines the Government's policy directions to enable agriculture, fisheries and forestry industries to remain competitive and to prosper. In many instances, recent improvements have been made to protocols or processes as part of the Government's response to the Report of the Taskforce on Reducing Regulatory Burdens on Business (the Banks Report). Where action is still required, the Department is examining what action can and/or should be taken to reduce the regulatory burden on businesses.

In many areas, complexity is generated by the interface between Commonwealth and state and territory constitutional responsibilities. The Commonwealth has responsibility for national matters such as quarantine and exports policy, while legislative responsibility for management of land and natural resources, including forests, rests primarily with the state and territory governments. Fisheries responsibilities are shared between the Commonwealth, state and territory governments. The Commonwealth does, however, play a key leadership and coordination role when there is a need for national action.

Inconsistency between jurisdictions, and overlap and duplication of regulatory regimes can present significant burdens for businesses, particularly those which operate at a national level. Where possible, the Australian Government is trying to resolve these types of issues through mechanisms at the national level such as the Council of Australian Governments (COAG) and ministerial councils. The ministerial councils particularly relevant to the agriculture, fisheries and forestry portfolio are the Primary Industries Ministerial Council,

the Natural Resource Management Ministerial Council and the Food Regulation Ministerial Council.

As part of the portfolio's responsibilities, the Minister for Agriculture, Fisheries and Forestry is responsible for administering over 100 pieces of legislation, and the Department administers numerous related regulations. The Department has an extensive legislative drafting program that aims to make improvements to the legislation it administers, including to reduce regulation and red tape. For example, the Department has been involved in developing legislative amendments to implement improvements to levy administration arrangements within the Department and to governance arrangements in portfolio agencies in response to the recommendations of the *Review of the Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Report).

Key Portfolio Regulatory Issues

Agriculture and Veterinary Chemicals and Fertilisers Regulation

The agriculture sector has expressed concerns about the regulatory framework controlling the use of agricultural and veterinary chemicals, including chemicals of security concern. A particular concern for the Australian Government and industry is the inconsistency between jurisdictions in regulating the use of chemicals and enforcing those regulations - while the Australian Government has responsibility for registering agricultural and veterinary chemicals, states and territories have responsibility for enforcement of regulations controlling chemical use.

Regulation of the chemicals and plastics sector was considered in detail in the Banks Report. In its response to the Banks Report, the Government announced that a PC study into chemicals and plastics regulation would commence during 2007. Negotiations on the terms of reference for the study are well advanced (the Department of Industry, Tourism and Resources has responsibility for this matter). The PC study will address industry's major concerns about chemicals regulation.

In addition, COAG has established a ministerial taskforce to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation. The PC study will inform the ministerial taskforce's considerations.

Wheat Marketing Arrangements

Under the *Wheat Marketing Act 1989* (the Act), the Wheat Export Authority (WEA) controls the export of wheat from Australia. All companies, except AWB (International) Ltd (AWBI), must be granted a consent from the WEA to export wheat. AWBI is the only entity that is exempt from the WEA's export controls and does not require a consent to export.

Australia's wheat growers consider the single desk wheat marketing arrangements to be the best way to conduct business, manage risk and maintain the reputation of Australia's high quality wheat.

On 22 May 2007, the Government announced that it would retain the single desk. However, growers will be given until 1 March 2008 to establish their own company, separate from AWB Limited, to manage the single desk. If this deadline is not met the Government has indicated it will consider implementing alternative marketing arrangements.

In addition, the Government announced that it will deregulate wheat exports in bags and containers by the end of August 2007, subject to a quality assurance scheme. This will reduce some of the regulatory burden on wheat exports. The Government's position recognises that the majority of wheat growers accept and support the regulatory restrictions placed on them by the Act.

In addition, the WEA will be given improved information gathering powers to help it carry out its functions under the Act, particularly for monitoring the performance of the single desk holder. The Minister will also have the power to direct the WEA to investigate matters relating to its functions. Information uncovered in such investigations will be able to be passed on to other law enforcement and regulatory bodies as necessary.

Food Regulation

The Department works in partnership with the Department of Health and Ageing (DOHA), Food Standards Australia New Zealand (FSANZ) and industry to develop and implement food regulation policies and standards that ensure food safety and security along the entire food supply chain. The Department's role is to work with DOHA (which has portfolio responsibility for food regulation policy) and FSANZ to develop food regulation arrangements which, while protecting public health and safety, minimise the regulatory burden on the food industry.

The Food Regulation Agreement (FRA) 2000 (amended in 2002) signed by COAG encourages a cooperative national system of food regulation in Australia. The FRA provides a policy commitment by jurisdictions to consistently implement the national food regulatory framework.

The new national food regulatory framework has achieved improvements in a number of areas. These include broadening the membership of the Australia New Zealand Food Regulation Ministerial Council, the key food regulation policy making body, to include ministers (in addition to health ministers) from other food related portfolios such as primary industries and consumer affairs. The new framework is intended to promote a whole of government perspective on food regulatory issues. It has enhanced the "paddock to plate" approach in food regulation and improved communication between all participants in the food regulatory system.

However, the Corish Report highlighted that the reforms to the food regulatory system had not fully achieved their intentions and that the food industry still view the system as cumbersome and unpredictable resulting in increased costs to industry and the stifling of innovation. Aspects of the system making it difficult for industry to conduct business include inconsistent enforcement across states and territories and the lengthy and complex process to amend the food standards code.

While recognising the improvements achieved, the Department and food industry stakeholders believe the current food regulation system could further be improved to enable the Australian food industry to respond to the changing global food industry dynamics. Further improvements could include, but are not limited to:

- consideration of alternative approaches to food regulation to allow industry innovation while ensuring public health and safety outcomes;
- consideration of minimum effective food regulation (as a last option) to deliver an appropriate balance between public health and industry issues; and
- promotion of consistent implementation and enforcement of nationally agreed food standards across jurisdictions.

The Department believes that active participation by the primary industry portfolios in the food regulatory framework is vital to enhance industry growth and innovation. In addition, consistent implementation of nationally agreed food standards across jurisdictions would create certainty for businesses operating across state borders and reduce the regulatory burden.

These issues have been raised in a number of reviews including the review of the Food Regulation Agreement and the Banks Report. To implement Recommendation 4.49 of the Banks Report, the Australian Government has commissioned an independent public review (the Bethwaite review) of the Australian food regulatory system. It is envisaged that the issues raised in this submission, as well a number of other food regulatory issues affecting the Australian primary production and food industry, will be addressed through the Bethwaite review.

Horticulture Code of Conduct

The Government introduced the Horticulture Code of Conduct (the code) in response to concerns expressed by horticultural growers over a number of years about the need to improve commercial transparency in the fresh fruit and vegetable wholesale markets.

The major problems in the wholesale markets included under-supply of important information, particularly relating to prices and quality of produce, the absence of clear written terms of trade and inconsistencies in the prices paid for poor quality and high quality produce. Many traders employed a 'hybrid' model of merchant trade where price is set by reference to the market but ownership and risk reside with the grower. Under this model a grower would not know if their trader was an agent or a merchant and often receives a payment from the trader with no information about the sale price of the produce. Often the price was advised after ownership transferred from the grower and this resulted in dispute.

The code clarifies the responsibilities and obligations of growers and wholesale traders. It addresses:

- the lack of clarity about when a wholesaler is trading as an agent or as a merchant when dealing with growers; and
- the failure to invest in written documentation of trade, including written transaction information and written trading agreements.

The Government agreed to a mandatory code only after it became clear that growers and wholesalers could not agree on a voluntary code. Grower representative groups strongly support the code, while wholesaler representative bodies oppose it. The primary concern is that the code prevents them from trading under the "hybrid" model. Wholesaler representative groups oppose a requirement that, in the case of a merchant transaction, the price must be agreed before or immediately upon delivery and ownership transfers on agreement of price.

Some wholesalers and growers argue that the code should also have covered retailers. The decision to exclude retailers from the code was made because there has been relatively less dispute in regard to direct transactions between growers and retailers.

As the code was only introduced in May this year (2007), it is still too early to assess the regulatory burden, if any, it places on growers and wholesalers. The code will be reviewed by July 2009.

Exceptional Circumstances Drought Support Access Requirements

The Exceptional Circumstances (EC) arrangements are the Australian Government's primary mechanism for providing assistance to farmers affected by drought and other rare and severe climatic events such as frost. State and territory governments are responsible for lodging applications for EC assistance to the Australian Government Minister for Agriculture, Fisheries and Forestry.

Under current arrangements, income support payments are delivered by Centrelink on behalf of the Department. Business support, or the Interest Rate Subsidy, is administered by the state and territory rural assistance authorities. State and territory governments also have a range of programs to assist farm businesses affected by drought such as freight, fodder and water subsidies as well as grants and low interest loans for the purchase of fodder, water and grain during drought.

The Department is aware of concerns raised by farmers, small business operators and some peak industry bodies relating to the complexity of the eligibility criteria of some elements of EC assistance measures. Concerns have also been raised about Centrelink procedures and the need to provide different forms because some assistance is provided by the Australian Government and some by state/territory governments.

Some eligibility criteria are consistent with other forms of "safety net" government assistance (ie. residency status, income and assets thresholds) while other criteria are specific to the EC programmes (ie must be a farmer for two years). In recognition of the complex nature of a farming business, additional criteria have been imposed to ensure only those farmers and small business operators in genuine need are provided with assistance. The Department considers the current eligibility criteria for the EC assistance measures are appropriate.

The Department aims to improve the effectiveness of drought support. During the current drought, new and improved drought assistance measures have been introduced in collaboration with other levels of government and following community and industry consultation. These measures include more streamlined assistance processes, extension of business support to small non-farm businesses, additional counselling and advisory services, provision of professional advice and planning for farmers facing difficult decisions, and community grants including small grants provided through a community-based organisation, the Country Women's Association.

A National Agricultural Monitoring System (NAMS) has assisted in streamlining exceptional circumstances applications and assessment processes. The NAMS centralises and consolidates nationally key climate and production data in one location. The Department's drought website providing information on all government drought assistance measures also simplifies access to information. In addition, "Drought Buses", were introduced in November 2006 to give people who have difficulty accessing Australian Government services in regional centres access to a comprehensive range of government services. The Drought Buses travel to drought-affected rural areas, transporting specialist staff in a fully functional office, and taking services directly to farming communities.

Administration of Quarantine and Import Controls on Agricultural, Fisheries and Forestry Products

Australia protects its human, animal and plant health through a comprehensive quarantine system that covers the quarantine continuum, with pre-border, border and post-border

activities. Pre-border, Australia participates in international standard setting bodies, undertakes risk analyses, develops offshore quarantine arrangements where appropriate, and engages with our near neighbours to counter the spread of exotic pests and diseases. At the border, Australia screens people and goods entering the country to detect potential threats to Australian human, animal and plant health. The Australian Government also undertakes targeted measures at the immediate post-border level. This includes national co-ordination of responses to emergency pest and disease incursions.

The movement of quarantinable material within Australia's border is the responsibility of relevant state and territory authorities, which undertake inter-state and intra-state quarantine operations that reflect regional differences in their pest and disease status, as a part of their wider plant and animal health responsibilities.

The Australian Quarantine and Inspection Service (AQIS) administers the *Quarantine Act 1908*, *Export Control Act 1982*, *Imported Food Control Act 1992* and various other Acts in order to protect Australia's animal, plant and human health status and to maintain market access for Australian food and other agricultural exports.

AQIS undertakes quarantine clearance of large volumes of imports each year including over 1.6 million sea cargo containers, 1.6 million consignments of High Value Low Volume air cargo, 11 million air passengers, and 146 million mail items. AQIS uses a co-regulatory approach in a number of its programs, with industry undertaking quarantine activities under AQIS compliance arrangements at industry owned and operated sites. This co-regulatory approach reduces the regulatory burden on industry, creating flexibility and allowing business to integrate quarantine requirements within logistics chains and business processes. This leads to significant cost savings and improved efficiency. AQIS has also integrated electronic data collection processes with the Australian Customs Service to reduce the data required from industry.

There are a wide range of divergent views on the administration of quarantine controls – from concerns that import conditions are not sufficiently stringent, to claims that the conditions are too costly and onerous. There also appear to be concerns arising from different state and territory quarantine requirements.

AQIS has clearly defined and transparent cost-recovery arrangements to minimise costs to industry. These arrangements ensure that cross-subsidisation does not occur between AQIS business programs – that is, fees and charges paid by each importer recover only those costs that have been incurred in the specific quarantine clearance activities required for that import. Since 2000/01 the Australian National Audit Office has conducted two audits of AQIS's fees and charges, finding on both occasions that AQIS fees are reasonable and comply with Government cost-recovery policy.

Administration of Export Controls on Agricultural, Fisheries and Forestry Products

Australia's farm exports are very important to Australia. Regulation is central to the maintenance and expansion of market access and trade opportunities for the export sector. The benefits of regulation can be seen both domestically and internationally:

- internationally, regulation provides our international trading partners with a high degree of confidence in the quality of Australia's agricultural and food exports; and
- domestically, regulation protects the agricultural and food export sector from the damage that could occur, in the absence of regulation, to the export trade, from incidents such as the export of unsafe food or mis-described goods.

In 2000, the National Competition Policy Review Committee concluded that the *Export Control Act 1982* fulfilled and continues to fulfill its purpose of controlling the export of prescribed goods. The Committee stated:

“Australia has a robust means of securing access overseas markets for its food and agriculture products through the Act and the export programs managed by AQIS. Agreed conditions for access and systems to ensure that the products are supplied in accord with the required standards are in place and are effective. The AQIS Australia Inspected (“AI”) health mark is recognised worldwide and is held in high regard by importing countries. The legislation provides tangible evidence that Australian law will enforce undertakings given by the Australian government in bilateral and multilateral trade agreements. Acknowledgment by importing countries of the value of certification under the Export Control Act is evidence that there is an ongoing need for the legislation as a means of facilitating export.”

Industry concerns and what industry thinks should be done or changed are summarised in the National Competition Policy Review Report (2000) at pages 41 to 57. The Report is available at <http://www.daffa.gov.au/aqis/quarantine/legislation>.

The Department considers that these concerns are still relevant and has taken the following action to address them to reduce the regulatory burden or to do things in a less restrictive way:

- outcomes-based Australian Standards and Primary Production and Processing Standards were adopted in 2005 as the basis for food exports in revised meat, dairy, fish and egg legislation;
- industry are directly involved in the policy development and direction of amendments to this legislation through AQIS/Industry consultative committees;
- under the new legislation there is far greater recognition of company responsibilities in meeting food safety and market access requirements;
- AQIS is no longer the monopoly supplier of inspection/audit services with recognition of commercial third party auditors in the dairy sector;
- electronic trading and certification initiatives have been adopted and integrated with existing commercial practices; and
- risk based regulatory scrutiny has long been a feature of the fish export program; a similar model is now being developed with industry for the meat export program.

Australian Regulation of the Livestock Export Trade

In response to the recommendations of the 2003 Keniry Inquiry into Australia’s livestock export trade (the Keniry Report), the Government announced initiatives to improve animal welfare requirements for industry. Industry accepted that changes needed to be made to the existing system and the Government committed \$11 million to implement the Keniry Report’s recommendations. Key elements of the Government’s response include:

- increased government involvement in regulatory control with stronger regulation of the industry and AQIS audits and inspections at key points along the export chain;
- improved industry quality assurance procedures;
- improved risk management and systems management;
- \$1 million a year investment in improving animal welfare outcomes in the Middle East; and
- new export protocols with Middle East destinations.

The Government also introduced the requirement for industry to comply with the Australian Standards for the Export of Livestock. The Standards were developed in

consultation with industry and represent the basic animal health and welfare requirements that the Government expects the livestock export industry to meet. The Standards are referenced in the Australian Meat and Livestock Industry (Export Licensing) Regulations 1998 and the Export Control (Animals) Order 2004, which came into effect on 1 December 2004.

The Department consulted closely with major stakeholders during the development of the Government's response to the Keniry Report, including on the development and amendment of regulations and on the implementation of the Keniry recommendations. A Regulatory Impact Statement was also completed.

The Department continues to work with the industry to improve animal welfare regulations, including through the Livestock Export Standards Advisory Committee, which comprises government, industry and community groups, and provides advice on amendments and review of the Australian Standards for the Export of Livestock. Industry also convenes the Livestock Export Industry Consultative Committee which considers industry concerns on regulatory and cost burdens.

Forestry – *Export Control Act 1982*

The export of unprocessed wood and woodchips is regulated under the *Export Control Act 1982*. In the *National Forest Policy Statement (NFPS, 1992)* the Australian Government agreed to remove export controls on plantation sourced wood, subject to the satisfactory application of Codes of Practice to protect environmental values. CSIRO assessed the Codes of Practice, which were developed in response to the NFPS, against 'Forest Practices Related to Wood Production in Plantations: National Principles (National Plantation Principles)' agreed by the Australian and state and territory governments. Following this assessment, the Australian Government has now approved Codes of Practice (or guidelines, in the case of South Australia) and, consequently removed export controls on plantation wood, in all states except Queensland.

The CSIRO reviews of the proposed Codes of Practice for Queensland and the Northern Territory (NT) identified gaps in the plantation management processes. In the case of the NT, the process for an approved Code of Practice for Plantation Forestry has been completed and signed off by both the Australian Government and NT Government Ministers and export controls have been lifted. The Department continues to encourage the Queensland Government to develop a code which can be approved.

The removal of export controls recognised the objective of treating plantations as long rotation agricultural crops, and met the aim of treating exports of plantation wood in a manner equivalent to other agricultural exports. The removal of export controls on plantation wood also recognised that the Australian forest industry operates in an international environment.

In addition, during 2004, a comprehensive review of the legislative and regulatory frameworks of all Australian jurisdictions associated with plantation development was undertaken as part of the implementation of the *Plantations for Australia: the 2020 Vision*. The *2020 Vision* is a strategic partnership between the Australian and state and territory governments and the plantation growing and processing industries to promote the continued development of a regulatory framework that supports the sustainable development and management of timber plantations. Some of the state regulatory frameworks are considered to be burdensome to the plantation timber industry and submissions have been made to relevant state regulatory review processes.

Wine Exports

The Australian Wine and Brandy Corporation's export control powers were prescribed in the *Australian Wine and Brandy Corporation Act 1980* to ensure that wine exported from Australia is of sufficient standard that the reputation of Australian wine is maintained and enhanced. Provision was made in the Act for the licensing of exporters and the issuing of permits for the export of grape products which were assessed as being sound and merchantable and where they meet the importing country's requirements. These powers were developed to minimise the risk of poor quality exports damaging the overall reputation of Australian wine.

Individual wine exporters occasionally voice concern about the need to obtain export approval before exporting wine, but feedback to the Department is that the overwhelming majority of industry supports the export approval process as necessary to safeguard the international reputation of Australian wine.

Animal Welfare - Model Codes of Practice (Australian Welfare Standards)

For the past 20 years, the welfare of livestock in Australia has been supported by a series of Model Codes of Practice for the Welfare of Animals (the Codes), prepared within the Primary Industries Ministerial Council system. The Codes are intended as a set of guidelines that provide detailed minimum standards for assisting people in understanding the level of care required to meet their obligations under the laws that operate in the states and territories.

As community values and expectations have changed, and our international trading partners have placed greater emphasis on animal welfare, industry has questioned the usefulness and relevance of these Codes. In addition, the development and revision of the Codes has been increasingly difficult, costly and time-consuming.

There is general agreement by industry about the desirability of having national objective (science-based) standards of animal welfare that are consistently mandated and enforced in all states and territories. To address industry concerns, the Department at the request of the Primary Industries Standing Committee commissioned research to consider arrangements for reviewing and developing the Codes as a basis for Australia's future animal welfare regulation. The subsequent report, *Review of the Australian Model Codes of Practice for the Welfare of Animals*, contained a number of recommendations and proposed options for future arrangements.

Animal Health Australia, guided by the Australian Animal Welfare Strategy (AAWS) developed by the Department, is rewriting existing Codes into new national welfare standards and industry "best practice" guidelines.

The new approach will encompass the AAWS objective of the promotion and adoption of a harmonised approach to the development and application of clear, contemporary, adequate and consistent animal welfare legislation and codes of practice across all state, territory and local government jurisdictions.

Native Vegetation and Biodiversity Legislation

Native vegetation on private land is managed for a range of outcomes including production of food and fibre, biodiversity conservation, water quality, salinity mitigation and cultural heritage. Native vegetation regulations are part of government efforts to sustainably manage Australia's native vegetation and biodiversity. In a number of states there has been

significant change in native vegetation regulations and regulatory regimes continue to evolve.

Alongside these regulatory regimes are industry driven initiatives (such as best management practice), planning activities (at the farm, local and regional level) and government programmes providing incentives to improve management of native vegetation.

Ultimately, the state and territory governments have responsibility under the Constitution for management of natural resources, including native vegetation. Both NSW and Queensland have, in recent years, introduced new legislation which aims to end broad-scale land clearing. In particular, the Department notes that the land clearing regulations under the NSW *Native Vegetation Act 2003* continue to be of concern for some farmers in the central west of NSW where they are restricted in managing invasive native species (INS) or “woody weeds”. These farmers claim that rejections of their INS clearing proposals are due to inflexibility in the Property Vegetation Plan Developer tool (used to assess clearing proposals) and results in reduced productivity, land degradation and loss of biodiversity.

The Department is supportive of more flexible and practical implementation of regulations for native vegetation management and complementary non-regulatory approaches, including government, industry and regional initiatives.

The NSW Government has amended its regulations to allow for the management of INS and has established a fund to assist landholders experiencing hardship as a result of the legislation. The NSW Natural Resources Commission has also been examining the potential for multi-farm vegetation plans and is currently finalising its report to the NSW Government.

The Australian Government is jointly funding the NSW Government to undertake a number of initiatives that will assist in contributing to better understanding of INS and its management, as well as assisting landholders to implement on-ground control measures of INS through National Action Plan for Salinity and Water Quality (NAP) and Natural Heritage Trust (NHT) investments.

The Department notes that the PC conducted an inquiry in 2003-04 into the impacts of native vegetation and biodiversity regulations. The Government agreed to all of the PC’s recommendations and is working with state and territory governments to improve arrangements for native vegetation and biodiversity management in line with the recommendations.

Water Management and Regulation

Water security and management have become major concerns for both rural and urban users. Over recent years, the Australian Government has been instigating major reforms to water management and regulation, primarily through the National Water Initiative (NWI). The NWI aims to achieve a nationally compatible market, regulatory and planning based system of managing surface and groundwater resources for rural and urban use that optimises economic, social and environmental outcomes. These initiatives have been supported by programmes such as the \$2 billion Australian Government Water Fund and the Australian Government’s recent \$200 million contribution to the Living Murray Initiative.

On 25 January 2007 the Prime Minister announced the National Plan for Water Security (NPWS) to improve water efficiency and address over-allocation of water in rural Australia.

The Australian Government is currently negotiating the implementation of the NPWS with states and territories and industry. The Department of the Environment and Water Resources has portfolio responsibility for water management and regulation issues.

Fisheries

Australia's Commonwealth fisheries are managed jointly by the Department and AFMA consistent with the provisions of Commonwealth fisheries legislation (*Fisheries Management Act 1991*, *Torres Strait Fisheries Act 1984* and the *Fisheries Administration Act 1991*). AFMA administers the operational aspects of fisheries management such as the development of fisheries management plans, regulating fishing effort, licensing as well as monitoring compliance with and the enforcement of fisheries legislation. The Department has responsibility for policy development, advice and coordination on national and international fisheries management issues.

A series of fisheries Offshore Constitutional Settlement (OCS) arrangements assign management responsibility for fisheries offshore from a state or the Northern Territory to that state or to the Northern Territory or to the Commonwealth, from the shore to the limits of the Australian fishing zone (AFZ). OCS arrangements are in place for all major fisheries, acknowledging jurisdictional lines, however there are numerous instances where management of a fish stock is shared and there is a need for better collaboration between jurisdictions to provide for sustainable, profitable fishing and effective efficient administration.

OCS arrangements also establish fisheries Joint Authorities such as the Queensland Fisheries Joint Authority; Northern Territory Fisheries Joint Authority; Western Australian Fisheries Joint Authority; and the Torres Strait Protected Zone Joint Authority (PZJA). With the exception of the PZJA, which is established under different legislation, if the Joint Authority comprises the Australian Government and one state or the Northern Territory, the fishery can be managed under either Commonwealth, state or territory law. In the absence of an OCS arrangement, state laws apply inside the three nautical mile coastal waters and Commonwealth laws apply from three to 200 nautical miles (or the limit of the AFZ).

A comprehensive review of the economic and ecological sustainability of Australian fisheries is currently being considered by the Australian Government.

Ballast Water Management Regulations – Invasive Marine Species Program

Australia is a signatory (subject to ratification) to the International Convention for the Control and Management of Ships' Ballast Water and Sediments (the Convention) which aims to reduce the risk of introducing marine pests through ballast water and provide consistent international ballast water management requirements for ships.

As part of a separate, but related process, the Natural Resource Management Ministerial Council and Australian Transport Council have agreed to develop a National System for the Prevention and Management of Marine Pest Incursions (the National System). Jurisdictions formalised this agreement in an Intergovernmental Agreement (IGA) in 2005 signed by all except the NSW Government.

Regulatory change is required to serve the dual role of implementing national ballast water management requirements, covering international and domestic shipping, under the National System and complying with the standards set out in the Convention. For this reason the National System has been developed to incorporate the standards of the Convention.

In developing the National System, regular consultation has been undertaken with stakeholders including representatives from the key shipping industry bodies, Shipping Australia Limited and the Australian Shipowners Association. The shipping industry has generally been supportive of the need for regulation. Industry's main concern is that the IGA specifies that the roles and responsibilities for the implementation for the National System will be shared, with the Commonwealth responsible for managing internationally sourced ballast water and the states and the Northern Territory responsible for managing ballast water taken up in domestic waters, in accordance with Constitutional responsibilities. This decision provides potential for the emergence of inconsistency in the application of the National System.

Industry has stated its preference for the National System to be solely the responsibility of the Australian Government. Failing this, industry considers it essential to have complementary legislation implemented in all jurisdictions that ensures consistency in national procedures. Through the IGA, jurisdictions have committed to delivering national consistency in standards, guidelines and protocols. NSW concerns with the IGA do not relate to the matter of national consistency.

The Department has sought legal advice on the best way to meet its regulatory obligations. Drafting Instructions have been prepared that would eventually allow jurisdictions to use planned Australian Government legislation as model legislation that can be applied at a state/territory level. However, ultimately it is for the jurisdictions to choose how to best ensure that their respective legislation allows them to deliver their commitment in the IGA.

There is a degree of risk associated with eight jurisdictions implementing legislation to serve a common goal. Increased costs to the shipping industry from lack of consistency in application could be reflected in increased freight costs and lack of consistency has the potential to create confusion for ships' masters and undermine the effectiveness of the arrangements in preventing marine pest incursions. Nevertheless, the states and the Northern Territory have agreed to a consistent approach and operational procedures and legislation are being developed on this basis.

Non-portfolio Regulations

Industry has identified concerns about a number of regulations that are not specific to the primary sector. These include the inconsistencies across jurisdictions in transport regulations, including in relation to maximum road weight limits; requirements in relation to temporary business long stay (subclass 457) visa arrangements; Occupational Health and Safety regulations; workplace relations regulations and some elements of superannuation.

As these issues are either not specific to the agriculture sector or are not administered by the Department, it is considered not appropriate to explore them further in this submission.