Submission to the Productivity

Review of Regulatory Burdens on Business - Primary Sector

Contents

Introduction 3

1 Food safety legislation and agricultural chemicals regulation..... 4

2 Biosecurity and quarantine - *Quarantine Act 1908*.................. 6

3 Environment Protection and Biodiversity Conservation Act 1999 . 9

4 Genetically modified organism (GMO) legislation 11

5 Labour market regulation 11

6 Minimising unilateral interventions by the Federal Government . 11

Introduction

The Western Australian Agriculture and Food sector welcomes this initiative aimed at reducing government red tape by identifying areas where federal regulation needs to be improved, consolidated or removed.

This submission focuses on a number of hot spots rather than providing comment on all areas of legislation. The Department understands that major areas of impediment to business, such as taxation law, superannuation law, and occupational health and safety regulation, have already been flagged for more detailed investigation by the Productivity Commission research team. Furthermore important areas such as grain marketing regulation and infrastructure access have not been dealt with here as these are the subject of separate review processes, such as the *Competition and Infrastructure Reform Agreement* (CIRA), signed by the Council of Australian Governments (COAG), to provide for a simpler and consistent national approach to the economic regulation of significant infrastructure.

The Western Australian agriculture and food industries service domestic and international markets with quality products and have been major economic engines for Australia. Regulation has therefore reflected the need to maintain growth of the sector and a key to success has been government policy that protects the competitive advantages of the sector while also encouraging self-reliance and innovation. It has also been appropriate for Governments to assist the sector by investing or regulating where there is clear market failure, to support improved capacity building and risk management and to assist with transitions to more competitive frameworks. It is important to note that future regulatory reforms should not result in long term cost shifts from business to government and other sections of society. However in considering reform any analysis needs to account for the balance of economic, social and environmental values that society holds for our rural sector.

The Department notes that a key focus is on reducing the compliance burden that regulation imposes on agricultural and food businesses, rather than reducing regulation per se. Our view is that most areas are not overly burdensome as net benefits are provided to the wider industry and community. However it is important to ensure that international competitors face similar regulatory requirements when servicing Australian domestic markets. Regulation relating to agricultural chemicals is used as an example to highlight this point.

Thankyou for the opportunity to provide input into the Productivity Commission's review of regulatory burdens on businesses in Australia's primary sector. The Department appreciates the opportunity to provide further comment following the release of the Productivity Commissions draft report in August 2007.

Ian Longson
Director General
Department of Agriculture and Food

1 Food safety legislation and agricultural chemicals regulation

Good progress has been made in developing a national approach to food regulation. The Trans-Tasman Mutual Recognition Act 1977 and the Food Standards Code underpin this. Furthermore the Australian and New Zealand Food regulation Ministerial Council is redrafting the Food Regulation Agreement and will report by December 2007.

Similarly agricultural chemicals are effectively controlled through National Registration legislation consisting of seven Acts: three dealing with registration activities and four relating to registration fees and charges. The centrepiece of this suite of legislation is the Agricultural and Veterinary Chemicals Code (the 'Agvet Code') scheduled to the *Agricultural and Veterinary Chemicals Code Act 1994*, which contains the detailed operational provisions for registering chemical products and provides the NRA with its full range of powers, including the evaluation, registration and review of agricultural and veterinary chemical products (including active constituents and product labels); the issuing of permits; the control of the manufacture of chemical products; controls regulating the supply of chemical products; and provisions ensuring compliance with, and for the enforcement of, the Code.

The seven Acts are:

- the *Agricultural and Veterinary Chemicals Act 1994* [No. 36 of 1994]
- the *Agricultural and Veterinary Chemicals Code Act 1994* [No. 47 of 1994]
- the *Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994* [No. 37 of 1994]
- the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* [No. 41 of 1994]
- the *Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Act 1994* [No. 39 of 1994]
- the *Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Act 1994* [No. 38 of 1994]
- the *Agricultural and Veterinary Chemical Products Levy Imposition (General) Act 1994* [No. 40 of 1994].

Costs involved in the National Registration Scheme are not limiting the achievement of new possibilities. Furthermore there are some proposals to further streamline the registration process. This includes 'listing' and 'reservation' from registration of certain types of generic chemical products.

What is problematic

These Acts in themselves are not unnecessarily burdensome.

However the approach for testing of imported food for residues of agricultural and veterinary chemicals is potentially problematic.

The Food Authority Australia New Zealand is currently reviewing testing of imported food for residues of agricultural and veterinary chemicals. International trends are towards stricter measures to ensure that imported foods meet the importing country's standards. The following points need to be considered to ensure Australian businesses are not put at competitive disadvantage.

The production of food in Australia is subject to increasing scrutiny of pesticide use. This scrutiny in not just through end point testing, but through policies and programs like the National Registration Scheme that provides some assurance to consumers that pesticides are well regulated and controlled. There has also been an increasing use of quality assurance schemes by Australian growers that use residue testing to verify the correct use of pesticides (e.g. FreshTest screens for 104 pesticides). The perception is that Australia has significantly less stringent program, policy and testing requirements for imported foods compared to requirements that some major trading partners place on foods they import from Australia or requirements for domestically produced food.

Both growers and consumers would have significant grounds for complaint if imported foods were not subject to equivalent requirements, including residue tests to confirm compliance with Australian standards.

There is an Imported Food Inspection Scheme (IFIS) that has monitored residues of agricultural and veterinary chemicals in imported foods for many years. This scheme should continue with a widened pesticide screen and a more integrated approach for risk assessment.

The IFIS pesticide screen could be widened to include cyclodiene organochlorines (e.g. lindane, DDT, dieldrin, heptachlor, and chlordane) and pyrethroids (e.g. bifenthrin, permethrin, cyfluthrin, cypermethrin, fluvalinate, fenvalerate, deltamethrin). Both these groups have been detected in previous State Health Department sampling. Organochlorines can still cause residue problems long after their registered use has ceased while pyrethroids have become the product of choice for many farmers around the world as highly effective insecticides with low relative mammalian toxicity. Also it is understood that some organochlorines are still being used in tropical developing economies, for example DDT for malaria control. The chemicals currently being monitored should wherever possible have equivalence to the surveillance that occurs on domestically produced food as these surveys target chemicals with a high residue risk.

They should also include the expertise, intelligence or knowledge of overseas chemical use or residue issues. The IFIS may consider developing a more integrated approach for risk assessment that includes more sophisticated use of residue results and the linking of results to chemical/commodity/country combinations so that profiles of produce from countries can be established. Countries/commodities with a good compliance record would be put into a lower risk category, while those with a poor compliance history would be in a high risk category. This could also be linked to a country's response to a residue violation investigation. An assessment and profile could be developed of a country in terms of whether it has a pesticide registration system, is able to control supply, has control on use, adequate labelling, farmer training and residue testing programs.

Once there is a rigorous process to identify and target at-risk chemical/commodity/country combinations you could start to rely on the IFIS residue testing data. The current use of food group data should not be relied upon, as the chemical/commodity/country combinations would be much more indicative.

When Australia has a violation in our exported products, the importing country, quite appropriately, seeks Australian government assurance that we have the necessary policies and procedures to use pesticides safely (e.g. USA/Meat Japan/Blueberries, Hong Kong/Carrots). Australia (AQIS/FSANZ) needs to respond more on a government to government basis when violations occur in food imported into Australia. This is particularly so since it appears we are shifting away from our more traditional trading partners (e.g. USA, NZ) to the developing economies that are new to our market for example, Vietnam, Thailand, Burma and China. In other words assessment of risk should include a pre-border component, rather than just relying on testing at the point of entry.

2 Biosecurity and quarantine - *Quarantine Act 1908*

Australia's favourable pest and disease status provides competitive advantage for our agriculture and food sector. It is essential that and a coordinated national approach to biosecurity is taken as it is a shared responsibility between the Australian, State and territory governments, industry and the community.

The Quarantine Act is however unable to regulate the introduction from overseas of pest plants (weeds) of regional concern. This results in a significant gap in the biosecurity continuum that States and Territories attempt to regulate, which inevitably leads to unnecessary burdens and cost on many sectors within Australia.

What is problematic

There are incidents where Department of Agriculture, Fisheries and Forestry (DAFF) through Biosecurity Australia or Australian Quarantine and Inspection Service (AQIS) fail to take into account or adequately manage regional differences in pest (including diseases) status and biosecurity risk when making decisions, implementing existing policy and enforcement of legislation (Quarantine Act) and actions taken under that legislation.

For example, prospective importers seek information on the requirements for the entry of a certain commodity into Australia from overseas are likely to consult ICON, AQIS' import conditions database. This information system provides all of the national biosecurity requirements for the entry of goods from overseas and some of the entry requirements for certain regions of Australia. However it is not comprehensive or complete.

This situation is acknowledged by AQIS in their website and in their import conditions and importers are advised of the following: *It is the importer's responsibility to identify and to ensure it has complied with, all requirements of any other regulatory and advisory bodies prior to and after importation including the Australian Customs Service, Therapeutic Goods Administration, Department of Health and Ageing, Department of the Environment and Water Resources, Australian Pesticides & Veterinary Medicines Authority and any State agencies such as Departments of Agriculture and Health, and Environmental Protection authorities*

It should be noted that a number of these organisations, in particular state government authorities, are applying biosecurity regulations to maintain regional freedoms and to protect their regions from incursions of exotic pests that may be present in other Australian States. The cost of any incursion of a pest of State

significance, even if it originated from overseas, is borne solely by the State. While there are funding agreements in place for emergency pests of national significance that involve the Australian and State Governments and national producer organisations, those agreements do not recognise regional differences in biosecurity status nor do they cover pests of State significance.

There is no consistent or effective national approach to biosecurity regulation in Australia. Past attempts to have a unified and consistent approach have met with some limited success but have fallen well short of providing a “one stop shop”.

This *ad hoc* approach to biosecurity and the application of regulations to the overseas border often results in a duplication of effort by Australian and State authorities, and is burdensome for importers. It frequently leads to those importers not being fully conversant with import requirements, goods not meeting all requirements on entry, the introduction of exotic pests and the potential for additional levels of regulations being applied by State and Territory governments to minimise risk and gaps in the biosecurity continuum.

Costs imposed

AQIS fails to adequately act on detections of exotic pests in overseas imports identified after their release from quarantine control. Recent examples in Western Australia include detections of dry wood termites, Khapra beetle, and Chinese Auger beetles have left the State exposed to the cost of managing the breach.

AQIS cites shortcomings in the Quarantine Act for their inability to act on these matters. As a result of failing to adequately act to prevent breaches of exotic (both to Australia and the region) quarantine pests or to act when breaches are detected by the States, States are forced to take steps to protect their regions. This results in additional costs and inconvenience to importers and the imposition of State legislation to protect their jurisdictions to prevent further occurrences.

Additional state legislation has the potential to add costs to importers due to the duplication of measures, application of the measures post border, confusion over what measures apply etc. There have been numerous examples of importers failing to meet State import requirements and having to deal with the costs and impositions that result from the post border application of second tier quarantine imposed by States. It is important to note that while there may be duplication of actions, often the outcomes or objectives of those actions differ, as the imperative of State is to maintain regional freedom from biosecurity threats.

Relatively simple issues, such as the lack of information sharing by AQIS with the States in respect to breaches, often results in relatively inefficient measures taken by States to contain and address a breach of an exotic pest.

However, while the effect may be inefficient and incur additional costs to one sector, the measures are designed to protect regional differences in pest status and risk and to ensure effective management of breaches of exotic pests. The net result should be an overall benefit however, it is clear that the same outcome could be achieved with less costs and impositions on certain importers and ultimately the consumer, if a more co-operative and co-ordinated, partnership approach was adopted for the import of goods at the overseas border.

An alternative that would better meet the underlying regulatory objectives

An alternative is for all border biosecurity measures applied to goods imported from overseas to be handled by AQIS to protect legitimate regional differences in pest status and risk and to work effectively with the regions to manage breaches by exotic pests in partnership with the States and Territories. The acceptance by the Australian Government for protection of regional differences in pest status and risk has been acknowledged by the Federal Minister for Agriculture and is DAFF policy for Import Risk Analyses. While this may be the stated objective of the Commonwealth, it falls significantly short in reality across the broader biosecurity continuum.

The Department of Agriculture and Food Western Australia has ensured that its proposed new biosecurity legislation (the Biosecurity and Agriculture Management Bill 2006) provides adequate protection for the State while minimising impositions and costs to both the importing groups and to the primary producers, environment and the broader community in general. Many of the specific regulatory requirements that have the potential to add to the costs and burdens to business are in subordinate legislation providing opportunities for highly flexible arrangements that can evolve with the rapidly changing world around in which they are designed to regulate.

In additional there are opportunity for more cost effective arrangements to be considered between the Australian and State Governments for the delivery of biosecurity services at the international border.

The adoption of a centralist approach has lead to the duplication of many biosecurity regulatory activities (albeit for very similar but different out comes). It is clear the same or a better outcome could be achieved with less costs and impositions on certain groups if a more co-operative and co-ordinated, partnership approach across the biosecurity continuum was adopted. It is important that the Australian Government take into account that one of the key roles biosecurity legislation is the protection of the biosecurity status of the Nation, including individual States and territories from threats posed by overseas trade.

It is acknowledged that a framework for integration of Australia's biosecurity system is underway (the Australian Biosecurity System for Primary Production and the Environment (AusBIOSEC)).

Hopefully through the AusBIOSEC initiative Australia's biosecurity system will be enhanced by establishing an overarching framework of common principles and guidelines. Successful implementation hinges on improved partnerships between the Australian Government and State and Territory governments.

3 Environment Protection and Biodiversity Conservation Act 1999

In relation to Natural Resource Management each State has lead responsibility for NRM management and operates under independent State legislation.

One area of overlap is the *Environmental Protection and Biodiversity Conservation Act 1999* which is administered by the Department of the Environment and Water Resources (DEWR). However a heads of agreement exists on Commonwealth/State roles and responsibilities for the environment. Also the EPBC Act allowed for the making of bilateral agreements with States and Territories to accredit their environmental assessment and environmental approvals process. An assessment bilateral agreement is in place for Western Australia. It would seem that streamlining the environmental approval process is now largely a State rather than Federal issue. This would be a greater issue for the resources sector rather than for agriculture and food.

One area of potential risk however is the import of live animals into Australia which is also controlled by the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

While the *Quarantine Act 1908* applies directly to conditions for the import of animals, its operation in regards to animals that are exotic to Australia is limited. The EPBC Act controls the international movement of wildlife, wildlife specimens, and products made or derived from wildlife. The EPBC Act has the capacity to set some conditions on the keeping and movement of, mainly, directly imported animals.

What is problematic

Application of the legislation in relation to international movement of wildlife can lead to future burdens for rural industries and businesses.

Inadequate risk assessment procedures for the import of exotic animals in Australia are likely to result in the import of potentially serious animal pests, which may be subject to lax keeping requirements and therefore have the potential to escape and establish natural populations. This would impose significant costs on the production sector through stock and crop losses and increased production costs, the environment and public amenity and safety.

Listed below is a small sample of an extensive range of serious pest animals for which import permits have been issued:

Cervus alfredi Philippine Spotted Deer, added species to Part 2 14/05/2003

Elaphe schrencki Russian Rat Snake, added species to Part 2 11/8/2004

Crotalus lepidus Rock Rattlesnake, added species to Part 2 11/8/2004

Tropidolaemus wagleri Wagler's Viper, added species to Part 2 11/8/2004

Pyxicephalus adspersus adspersus African Bullfrog (southern subspecies), added species to Part 2 25/8/2004

Dendrobates azureus, Blue poison arrow frog, added species to Part 2 20/07/2005

Dendrobates galactonotus Splashback poison arrow frog, added species to Part 2 20/07/2005

Psittacus erithacus African Grey Parrot, added species to Part 2 13/10/2005

Pyrrhura frontalis Maroon bellied Conure, added species to Part 2 24/2/2006

Aotus lemurinus Lemurine Night Monkey. added species to Part 2 03/08/2006

Aotus nancymaae Ma's Night Monkey, added species to Part 2 03/08/2006

Aotus trivirgatus Northern Owl Monkey, conditions for import changed to

Part 2 03/08/2006

Indotestudo elongate Elongate tortoise, added species to Part 2 15/07/2005

Ara rubrogenys Redfronted Macaw, add species to part 2 14/02/2005

The specific procedural problem is that it appears to be the policy of DEWR that a person who applies to amend the list of specimens approved for live import under this Act is responsible for preparing terms of reference and assessment reports and for covering the costs of the assessment.

The Act itself does not seem to specify this.

If the proponent is responsible for 'preparing draft terms of reference for a report into the potential impacts on the environment of the species being proposed for import', they may have a conflict of interest. They will want to get the import approved and so will have a motive to bias their proposal towards a position that will favour this outcome. This directly conflicts with the need for a balanced and rigorous assessment process. If the proponent is responsible for 'preparation of a draft report based on the terms of reference', either by conducting the assessment, or by nominating and employing an assessor, they or their employee may also have a conflict of interest.

Given the level of detail required in a full risk assessment, it would be difficult for a third party (eg an DEWR administrator or State agency reviewer) to pick up any such bias unless they undertook a full independent assessment to check if any relevant references/information had been excluded or not given balanced coverage – thus effectively replicating the assessment. It is difficult to envisage how there can be any in-built transparency in any review processes to mitigate this risk. Neither transparency nor review will show up missing information unless an independent person undertakes an equivalent full risk assessment to determine what information is available and should have been included.

An alternative that would better meet the underlying regulatory objectives

It would be far more efficient, transparent and unbiased if a suitably qualified and independent person was appointed by DEWR to conduct the assessment. The applicant could still pay for this to occur.

This change in approach will also contribute to public good by reducing the opportunity for bias in the import risk assessment process and the associated level of biosecurity risk to primary production, biodiversity, and public amenity and safety.

4 Genetically modified organism (GMO) legislation

There are no current issues with the GMO regulatory framework. There is a State Moratorium in place and the *GM Crops Free Areas Act 2003* and State policy will under go review late in 2008.

The Commonwealth *Gene Technology Act 2000* was reviewed 2005/06. There was extensive consultation with the States and the public. Amendments to the Act and the Regulations should come into force July 2007.

5 Labour market regulation

Labour shortage is a major issue across all agricultural sectors with acute seasonal problems occurring in the horticulture and meat processing industries. The Department of Agriculture and Food Western Australia (DAFWA) estimates that a minimum of 12,000 new workers need to enter agriculture in WA every year in order to retain the status quo.

Immigration legislation and policy is impacting on the approaches taken to address the national shortage of workers in the agricultural sector. It is encouraging that temporary 457 visas are available to skilled workers to fill gaps in the labour market and these have been used to assist address labour issues in Western Australian meatworks. Also holiday maker visas enable backpackers aged 18 to 30 to service seasonal work on farms.

What is problematic

These approaches are valuable but casual tourist labour does not provide an ideal workforce. Western Australian Agriculture needs a dependable workforce with a well designed and regulated program that ensure workers are treated fairly.

Improved leadership, cooperation, and more robust information is needed for strategic industry workforce plans to be developed to enable the issue to be properly addressed. A lack of leadership on this issue means that there is little communication within the industry. This results in a lack of information as to the extent of the problem and a resultant inability to form strategy to tackle the problem.

Partnered approaches between the State and Federal governments and specific industry supply chains are needed.

6 Minimising unilateral interventions by the Federal Government

The Federal Government continues to independently launch and deliver programs into the Western Australian Agricultural and Food sectors.

This is largely not a regulatory issue and may be beyond the scope of this review. Nevertheless it is an increasing issue that not only results in duplication and inefficiency but can also result in poorly targeted counter-productive activity.

Formal partnering arrangements should be negotiated with the State Government prior to announcing new initiatives.

What is problematic

An example of this issue is the Department of Agriculture, Fisheries and Forestry - Advancing Agriculture Australia package of programs, in particular the FarmBis program.

FarmBis will now be only a National program, ending a ten year state/federal partnership.

Western Australia Primary producers may now miss out on appropriate capacity building opportunities due to the following:

- Priorities for training being set by the Australian Government with little reference to WA issues;
- A dominance of Eastern State Registered Training Providers who are unwilling to provide cost effective training delivery in the sparse WA primary industries market;
- Lack of coordination and brokering of training at the local production group level; and
- Insufficient insights into local issues through the loss of the regular surveying and interaction.

The shift away from capacity building programs delivered as State/Australian Government partnerships will dampening a continuous learning behaviour grounded on work directly at the local production group level and targeted at their particular skill development needs.

State based administration also reduces paperwork and the time taken for approvals and reimbursements.