Northern Territory
Horticultural Association Incorporated ABN 73 183 873 626

Fostering a sustainable industry, that values the environment and the spirit of rural communities.

Northern Territory Horticultural Association

Submission to:

Australian Government Productivity Commission

Annual Review of Regulatory Burdens on Business – Primary Sector

June 2007

Acknowledgement

I would like to take the opportunity to acknowledge the efforts of Commissioner Mike Woods and the productivity commission for their commitment to the industry consultation process. The commission visited the Northern Territory, to seek the views of industry stakeholders.

It is extremely difficult for industry participants to allocate time and resources to consultation processes, particularly when they are held in the Australian capital or eastern capital cities.

The opportunity for our industry representative to meet with the commission in Darwin was much appreciated.

Tracey Leo

Principal Officer

Northern Territory Horticultural Association

Preamble

The Northern Territory Horticultural Association recognises that generally, regulation is introduced as a last resort and is implemented to manage unacceptable risk; or is a consequence of unethical conduct. The NTHA is not adverse to regulation that manages unacceptable risk to the community, the environment or the industry. Nor is it adverse to regulation that places controls over unethical conduct.

It is imperative however, that industry and other stakeholders have reasonable opportunity to contribute to the process of determining unacceptable risk and unethical conduct and that the impact of regulation is effectively assessed. The industry is not resourced to participate in consultation processes (participation is often difficult when there are so many) and the federal government must allocate resources to ensure that affected stakeholders are adequately consulted and represented.

It is critical also that the agencies and systems within agencies that will be charged with managing regulation requirements can do so efficiently and effectively. The effectiveness of any form of regulation, including self-regulation, depends on the degree to which it achieves its objectives. Inefficient management and administration of regulation often renders it ineffective.

It is also important that regulation is reviewed periodically to ensure that:

- it is meeting its objectives;
- it is relevant in the current environment;
- it is managed efficiently;
- The industries that are impacted by regulation have the capacity to comply and manage administration requirements of such regulation.

The NTHA recognises that in most circumstances, well managed regulation brings benefits to the commercial industry sector and the wider community.

In participating in the review of regulatory burdens and the impact on the horticulture industry, the NTHA has taken into consideration; the objectives of the

regulation, the relevance of the regulation, the effectiveness of the administrators of the regulation and the capacity of industry to comply.

The NTHA provides comment on the following:

1. Agricultural chemical regulations
2. Australian Employment Requirements for seasonal workers
    a. Superannuation guarantee
    b. PAYG withholding
3. Centrelink Reporting
4. Checking work eligibility
5. Visa and migration programs
6. Duplication in form filling
7. Occupational Health and Safety Standards and Australian Safety Standards
8. Quarantine requirements
9. Biosecurity processes
10. Horticulture Business Code

1. Agricultural chemical regulations

The NTHA recognises that regulation in chemical use is necessary to manage risk to the community and the environment.

The NTHA supports a science based approach to chemical registration however we submit that the application processes for chemical registration, minor use and emergency use permits are excessively cumbersome for industry to manage. There is insufficient support for industries to obtain or develop scientific data to support applications.

As identified by minor use coordinator Peter Dal Santo , *the horticulture industry frequently suffers from a lack of legal access to crop protection products to effectively manage pests and disease. Whilst crops are valuable, they are too small individually for agrochemical companies to bear the high cost of registering pesticides for use on them. It is also a problem in larger crops where a problem may only be localised.*

Growers are increasingly trapped in a situation where they face severe losses from diseases, pests and weeds if they do nothing to protect their crops, or face penalties if they use a product that is not registered or available via a permit.

The new factor affecting pesticide access is the shrinking number of agrochemical companies and the increasing reliance on generic, older pesticides, with little new technology being made available.

The NTHA submits that the application and data collection process is resulting in chemical users working outside of the regulation and has fostered a reliance on single broad spectrum chemical's , rather moving to a suite of "softer" targeted chemicals, that may be used in an integrated pest management strategy.

Also of major concern is that chemical reviews do not adequately take into consideration impact of withdrawal (trade restrictions etc). Nor do they

reasonably consider time frames and resource constraints for industry to develop alternative pest and disease management strategies.

While there is strong community sentiment to chemical use of any kind it is important to remember that chemicals themselves are used in horticulture to manage pest and disease risks that affect the community and environment.

2. Australian Employment Requirements

In addition to permanent staff and farm owner operators, the Northern Territory horticultural industry employs and estimated 3526 **seasonal** harvest workers per annum.

Figures collated in 2006 capturing 1561 seasonal harvest workers show that:

- 73% of seasonal employees are Working Holiday Makers *(international backpackers on 417 visa)*
- 18% of seasonal employees are Unregistered Job Seekers *(Australian residents who are not registered as unemployed and includes retirees)*
- 8% of seasonal employees are Registered Job Seekers *(unemployed on benefits)*
- 1% refugees and other visa holders

According to the figures collated from the 2006 mango season, the average period a worker stayed in harvest employment was 2.36 weeks.

The NTHA submits that all seasonal employees, regardless of citizenship or residency status, be entitled to equality in employment conditions in accordance with the Australian Fair Pay and Conditions.

However, the NTHA does not support the current:

- **superannuation guarantee** requirements for working holiday makers (visa 417)
- **PAYG withholding** rates for working holiday makers (Visa 417) who are non residents for taxation purposes

Superannuation guarantee

It is the opinion of the NTHA that the superannuation guarantee obligations for seasonal working holiday makers is an unnecessary administrative burden to the primary sector.

It is the opinion of the NTHA that the superannuation guarantee should not apply to working holiday makers (VISA 417). The current requirements do not meet the objectives of the intent of the regulation, which according to the ATO *Ref (NAT 10900-06.2006)* "The aim of the superannuation guarantee is to ensure that as many Australians as possible enjoy the benefits of superannuation income when they retire from the workforce."

It is not likely that working holiday makers receive significant benefit from superannuation guarantee as their employment is sporadic and contributions are taxed at 15%.

When a working holiday maker leaves Australia and applies for a departing Australia superannuation payment (DASP) his superannuation contribution is subject to withholding tax. In most cases, there will be a further 30% tax withheld on their payment.

As stated on the Australian Taxation Office Website "Employees aged between 18 and 70, who are paid $450 (before tax) or more in a calendar month are covered by the superannuation guarantee legislation, whether they work full-time, part-time or on a casual basis." This includes seasonal harvest workers.

Seasonal harvest workers are also covered by the choice of superannuation fund initiative, which gives employees the right to choose which superannuation fund their employer superannuation contributions are paid into.

The superannuation requirements to seasonal employees have major administration implications for growers who act as employers.

Major administrative burdens arise from (but are not limited to):

- Large numbers of short term employees
- High turn over of seasonal workers during peak production times
- Most working holiday makers not being aware of their superannuation entitlements or obligations to provide information

Once a seasonal harvest worker makes a choice of superannuation fund, an employer must arrange to pay contributions into that fund. Some superannuation funds require employers to apply to become a 'participating employer' before they can pay contributions to them.

Employers also need to check that the choice of superannuation fund:

- is a complying fund, and
- meets the minimum life insurance requirements for choice of superannuation fund, or is covered by the transitional arrangements for insurance coverage.

If growers don't meet choice of superannuation fund obligations, they may have a 'choice liability'. This is part of the superannuation guarantee charge and increases the amount they have to pay. The choice liability is 25% of whatever contributions paid that did not meet choice of superannuation fund obligations (to a limit of $500 per notice period per employee).

Administering the superannuation requirements for a large number of short term employees is excessively cumbersome and costly to administer, particularly if multiple funds are nominated.

The administrative burden is amplified when there is a high turn over of staff and / or employees commence work intermittently in accordance with seasonal demand.

Many farms have few permanent employees, but can require up to 200 seasonal workers to pick and pack for a seven week season, with the average worker staying only 2.36 weeks. The administration associated with superannuation guarantee for seasonal harvest labourers is unacceptably cumbersome and costly to administer.

In addition to this, a large number of working holiday makers, are not aware of their superannuation entitlements or obligations to provide information. Subsequently they arrive on farm unprepared to make informed decisions about superannuation preferences and do not have adequate information to enable the grower to meet his legal obligations.

Growers are deterred from making recommendations about which superannuation fund an employee should choose and the level of contributions they make to superannuation, as providing this information is considered to be either general or personal financial product advice by the Australian Taxation Office. Anyone providing financial product advice is generally required by law to be licensed by the Australian Securities and Investments Commission (ASIC).

Growers are then faced with either accepting a delay in the workers commencement until he can obtain his information, which is difficult in peak harvest, or commence employment and face penalties for breaching superannuation guarantee requirements.

PAYG Witholding

According to the ATO: “Taxes that are paid to the Australian Government are used to provide services to the community such as health, education, defence, road and railways, social security and welfare.” It is questionable whether it is ethical to tax a WHM at a rate of 29% when he is not likely to benefit from subsequent tax investment .

It is the opinion of the NTHA that variable tax rates are discriminatory to working holiday makers and tax disparities between workers performing the same role have adverse impacts on productivity and staff retention and the industries ability to attract overseas workers.

Residents are entitled to the tax free threshold *(they are not taxed on the first $ 6000.00 they earn)* and horticulture employees are taxed at 13%. Non residents are not entitled to a tax free threshold and pay 29% tax for every dollar up to $25 000 they earn.

Since August 2002, the Australian Government has introduced strict regulations, with regard to the entitlements of people participating in the *Australian working holiday visa* program, to receive income tax refunds.

Variable tax rates between Australian residents and non residents, creates disparity in the net wages of people performing the same duties. This creates discontentment and often resentment for non residents and impacts on productivity and retention.

In some circumstances Working Holiday Makers qualify for "Resident" status for taxation purposes. The Commissioner for Taxation has determined that such qualification can be judged on a case by case basis.

A working holiday makers residency status for tax purposes is based on an ATO self assessment process, so the employee (or the person making the declaration) is responsible for any tax liabilities that may be incurred for incorrectly assessing his or her residency status.

This situation fosters an environment of non compliance and workers often abandon complaint farms (that enforce non residency status declarations) and work on non compliant farms to increase their net return. While this may have long term ramifications for the employee, working holiday makers who are undertaking a once in a life time experience, give more consideration to their immediate social satisfaction rather than their long term economic situation.

3. Centrelink Reporting

Australian residents who receive a Centrelink allowance are required to report their employment activities to Centrelink. If Centrelink cannot obtain proof of

income from the employee on a Centrelink allowance, they will seek to obtain verification of employment, income information and dates and hours worked from the employer.

This can be cumbersome for farmers to respond too, particularly if the inquiries are several years after the person has been employed.

Growers are deterred from employing Australian residents on Centrelink allowances because there is a high incidence of employees not meeting their Centrelink reporting obligations and the follow up administration for growers is unmanageable.

4. **Checking work eligibility**

The human resource costs associated with validating work rights and the long turn around time for verification is becoming increasingly cumbersome and unworkable in peak harvest.

The Department of Immigration and Multicultural affairs continues to respond to these issues and has introduced EVO (Entitlement Verification Online) , fax back systems and 1300 information lines , however the increased reliance on the transient WHM labour pool, places extreme and constant demand on verification systems in peak harvest , resulting in the systems being “overloaded”.

The restrictions on technology in regional and remote areas, and the reliance on internet , phone and facsimile systems to verify work eligibility results in verification taking up to 7 days.

Communication lines are also used to manage trade (produce agreements) and other communications with critical stakeholder in peak harvest and line congestion is not uncommon.

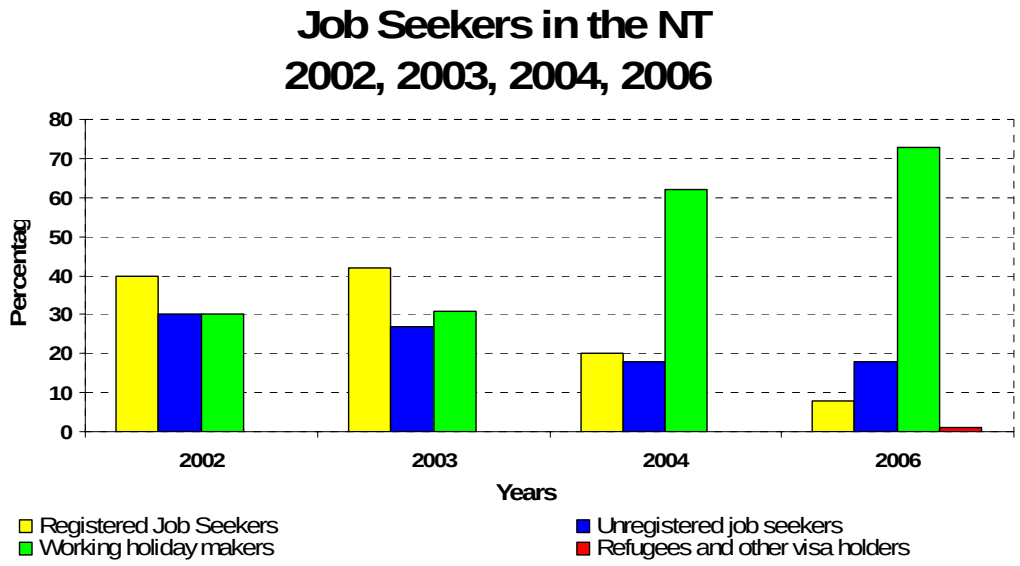
The industry submits that a “Green Card” or simple identifier needs to be introduced, so that growers can promptly identify eligible workers. These may be

issued to workers prior to commencing employment and may include photo identification and expiry dates.

5. Working Visa's

The horticultural industry comprises predominately of tropical tree crops and it is unlikely that technologies and mechanisation will assist in addressing labour shortages.

The industry is increasingly reliant on overseas workers, currently working holiday makers on 417 visas. The graph below highlights the increased reliance on overseas workers.



Reliance on WHM as a labour pool is volatile and WHM's from countries with reciprocal work agreements are often not suited to the climate and working environment.

The NTHA submits that other countries (not currently under the reciprocal working arrangements) be considered for working arrangements. Amendments in visa programs would have mutual benefits to the Australian economy and the economy of overseas communities engaged in such a program.

The NTHA supports the development and introduction of visa programs that will allow employees from overseas with ASCO skill levels 5 – 9 undertake seasonal work in the horticulture industry in regional Australia.

The NTHA also supports a review of the minimum employment requirement of three months for skilled labour agreements.

6. ID card / Farm Card

The horticulture industry is subject to various forms of regulation including industry self regulation. Regulation has appeared in many forms.

The NTHA recognises that any form of regulation brings benefits to the wider community and provides delineation between commercially focused professional industry participants and non professional participants.

To assist with unnecessary duplication in administration the NTHA supports the introduction of a National “Farm Card” or similar that captures data that is relevant to the business enterprise. Information may include but not be limited to:

- ICA arrangements
- AQIS certification
- Quality assurance
- Development activity
- Business activity
- Details of audited self regulated systems

The NTHA submits that a National data base ID number that holds ICA, QA, business activity, development activity etc, breaches in compliance will assist with duplication in form filling and commercialize industry. It will also help with national security issues. (fertilizer and chemical movements).

7. Occupational Health and Safety Standards and Australian Safety Standards

Occupational health and safety standards and the variation in state / territory legislation are difficult for industry to understand. The lack of clarity around variations in state requirements makes it difficult for industry to comply, particularly when the business operates in multiple states.

Australian standards for use in farm machinery also creates confusion as often the machine may meet the Australian manufacturer's safety standards but does not meet OHS standards when in use (EWP cage V lanyard) .

The standards for manufacturing and use must be consistent and be able to incorporate intended use. For example elevated platform use requirements standard may be relevant to the construction industry but not horticulture where the use of a lanyard in foliage is hazardous.

8. Australian Quarantine Inspection Services

While it is not within the scope of this review to consider quarantine costs and requirements imposed by importing countries (of Australian export products) , the NTHA submits that the increasing costs associated with AQIS inspections and the duplication in audits are becoming commercially unviable and cumbersome, resulting in stifled trade .

Farms that operate as registered quarantine inspection facilities undertake audits to ensure the facilities meet accreditation standards. They also undertake quality assurance and industry self regulated programs that have similar audit requirements.

AQIS officers also attend the Registered Quarantine Inspection facility to inspect product for export. The exporter completes all the necessary documentation and the inspector signs off on the documentation. The fees associated with quarantine inspections impact on profitability and competitiveness. (In addition to this, importing countries often have their own inspection requirements, further adding to the cost of export).

The NTHA submits that self regulated industries that can demonstrate vigorous auditing and monitoring processes should be recognised by AQIS to avoid duplication.

For example the nursery and garden industry undertakes a National Accreditation scheme; Nursery Industry Accreditation Scheme Australia (NIASA) and participating nurseries are subject to stringent audits that comply with export standards. Self regulated industry initiatives would be more effective if they were recognised by regulatory bodies. It would also assist in reducing costs to both the industry and government.

International Trade in Endangered Species

CITES is an established worldwide system of controls on international trade in threatened wildlife and wildlife products and stipulates that government permits are required for such trade.

Details of the conditions applying to species or specimens subject to such declarations are maintained by the Department of the Environment and Heritage.

As part of CITES requirements, growers provide information to Dept of Environment and Heritage, to qualify as an artificial propagation nursery for five years. They then apply for an export permit to trade the specified product in commercial quantities any where in the world. . Export permits to trade Endangered Species are renewable every six months.

Growers have Specimen Export Records that are pre-signed by the Delegate of the Minister from Dept of Environment and Heritage and they complete the documentation by providing relevant details per consignment.

The extensive documentation provided to Dept of Environment and Heritage allows qualification for Artificial Propagation Nursery to receive our Approval that is valid for 5 years. Then we must apply and pay fees every 6 months for the Export Permits. Why isn't the export permit valid for the 5 years as well?

9. Bio security imported seeds requirements

Biosecurity Australia has recently amended permitted entry requirements for plant seeds into Australia.

The review undertaken prior to the amendments did not provide all stakeholders with the opportunity to analyse the comprehensive list to identify exclusions. Nor did it provide all stakeholders with adequate time frames to list known species.

The NTHA submits that Biosecurity Australia and AQIS method and capacity to correlate and cross reference data to a satisfactory standard is not sufficient and an effective national weeds risk assessment process has not been established or resourced.

The NTHA submits that the consultative process undertaken by Biosecurity has been flawed, in that many key stakeholders were not formally notified about, or invited to participate in the review.

In March 2006 we received anecdotal information that a review of some description was being undertaken. Representatives from the NTHA made contact with local AQIS personnel, but our efforts to obtain full details of the review were unsuccessful.

In consultation with other Tropical Horticulture representative groups, both locally and nationally, it was apparent that the Tropical Horticulture sector has been omitted from the formal consultative process.

The Department of Primary Industry, Fisheries and Mines (DPIFM) Crop, Forestry and Horticulture Division, whom are a major stakeholder, were not notified of the review.

Further consultation with our membership base and other stakeholders revealed that:

- There are some plant products that are currently classified at a genes level; however they do not have an attributed species name. i.e. (*sp.*) Under the proposed legislation this material would be excluded from the permitted list
- there are inconsistencies and contradictions between the permitted seeds list, the prohibited seeds list and the imported seeds list
- There are seeds that have been imported through the AQIS process since 1997 that do not appear on the list.

If Biosecurity Australia is to replace the genus level listings currently appearing on the permitted seeds list with species level listings for those species in Australia, and anything outside of the list will need to go through a process of proving their status to be

registered, then it is imperative that the fundamental infrastructure including the capacity to correlate data, is in place before this legislation is introduced.

New plant varieties are integral to the development of the horticulture industry in the Northern Territory and the Top End of Australia and it is critical that legislation does not impede this development.

The NTHA understands the importance of quarantine laws that protects our industry from pest and disease outbreaks, however given the current industry climate and strong focus on diversification, a functional framework must be put in place prior to the introduction of this stringent legislation that may impede new varietals developments.

10. Horticulture Code of Conduct

The NTHA has a historical commitment to the Horticulture Code of Conduct and believes the code will help stamp out unethical / unprofessional conduct in both the wholesale and grower sector. The NTHA supported:

- a requirement for traders to publish a minimum terms of trade
- a mandate for growers and traders to enter into written agreements that were underpinned by regulation

However we are concerned that there are omissions from the code that may create an anti competitive trading environment, and there are elements of the code that we believe will continue to foster ambiguity.

The NTHA has always maintained that a mandatory code should encompass any trading party at the first point of sale from the farm gate. That would include wholesaler, retailer, exporter or food processor. The NTHA submits that the exclusion of selected parties from trade regulation will create an anti competitive trading environment.

Other concerns relate to

- grower owned pack houses and their coverage under the code
- the impact on small producers if price averaging (under produce agreement) not be permitted
- buyers agents exclusion from the code

While industry lobbied strongly to have the first point of sale from farm gate covered under the code, the ACCC interpretations of first point of sale have raised concerns.

Pack houses that offer marketing as a service, will be included in the code as the first transaction, thus excluding the next transaction to the wholesale trader. This also applies to grower owned pack houses. Our concern is that growers operating in these environments will be exposed to the same trading issues that have always existed.

The ACCC have also indicated that under the code, while pooling of growers fruit is permitted, price averaging is not. This has major implications for grower cooperatives where growers market together and agree to average prices to manage supply to markets.

The NTHA has worked with growers over a number of years to facilitate collaboration and a lot of work has been undertaken to get growers to work together to manage supply including a three year investment by the industry, the Northern Territory Horticultural Association and the Department of Agriculture Forestry and Fisheries under the Industry Partnership Program .

Northern Territory growers are distanced from the central markets and many grower cooperatives utilise centrally based marketers to manage distribution of produce to avoid oversupply. Pooling of prices is integral to the success of this type of coordinated marketing.

A fundamental flaw identified, is that the code excludes “buyers” agents. If an agent is working as an agent to the grower he is included under the code but as a buyers agent he is not. There are major concerns as to how this will play out in the market and the impact that this will have on prices achieved for growers.