

1. INTRODUCTION

1.1 Origins of the Review

In 1993, a review, headed by Professor Frederick G Hilmer, reported on how best to ensure that there were no unnecessary restraints on business competition in Australia. In April 1995, the Council of Australian Governments (COAG) agreed to implement a package of measures designed to extend pro-competition policies, a key element being the Commonwealth's *Competition Policy Reform Act 1995*. The objectives of the Act are to help to dismantle private and regulatory barriers to competition, and to encourage competition throughout the whole economy. It also aims to provide the domestic policy arrangements needed to realise the opportunities arising from Australia's external trade policies and developments in the international economy.

As a result of the agreement by COAG, the Commonwealth Government instituted a comprehensive examination of its legislation to ensure that National Competition Policy (NCP) is being followed. This Review is part of that process. The Commonwealth schedule of reviews approved by Cabinet on 4 June 1996 listed the *Export Control Act 1982* (hereafter referred to as the '*Export Control Act*', or 'the Act') for review in 1998-99.

The principle behind competition policy, as stated in the Hilmer Report, is that it 'seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives'. This Review considered the Act in its entirety, but particularly focused on those parts of the *Export Control Act* which restrict competition, or which result in costs or benefits for business. The terms of reference for the Review and membership of the Review Committee are shown in Attachments 1 and 2 respectively.

1.2 Conduct of the Review

The Review formally commenced in February 1999, and there have been regular Review Committee meetings through its course. Key stakeholders were contacted in February to assist in defining the major issues for the Review. Advertisements were placed in the national press in March, inviting submissions on the operation of the *Export Control Act*. Invitations to make a submission were also sent to over three hundred stakeholders, including industry, Commonwealth and State Government instrumentalities, and governments of countries with significant agricultural imports from Australia.

The Review received 54 written submissions from a broad cross-section of the food exporting industry, government departments and consumer representatives. In addition, the Review Committee consulted with exporters, peak industry organisations, relevant government instrumentalities in Australia, and representatives of importing countries (see Attachment 4). The Review Committee undertook industry site visits and held discussions with policy and operational staff of the Australian Quarantine and Inspection

Service (AQIS) responsible for exports of food and agricultural products. All this information was incorporated into the Draft Report, which was released in August 1999. The further input to that has been incorporated in the Final Report. The Review also drew upon other contemporary reviews, in order to incorporate lessons derived from similar concerns. These reports included the Food Regulation ('Blair') Review, and the Quarantine and Exports Advisory Council (QEAC) reviews of Dairy, Grains, Horticulture and Fish.

Research was conducted into the costs and benefits of the *Export Control Act*, and the Australian Bureau of Agricultural and Resource Economics (ABARE) provided aspects of economic analysis to assist in ensuring that the Review Committee's deliberations had a sound economic basis.

The terms of reference required that the Committee, in assessing the impact of the *Export Control Act* on competition, take into account, where relevant, effects of the legislation on a number of factors including the environment, welfare and equity, occupational health and safety, economic and regional development, and competitiveness of business. Given the nature of the Act, some of these considerations carried more weight than others and so were explored in more detail in this Report. Principally, these related to:

- the competitiveness of Australian business,
- the efficient allocation of resources, and
- economic and regional development, including employment and investment growth.

Issues of less relevance to the Review, and not addressed in the Report in detail, were:

Ecologically sustainable development

As the *Export Control Act* facilitates the export of food and agricultural products, the effect of the additional demands of exports on the environment occurs mainly through the impact of farming on Australia's marginal land as a result of overcropping or overstocking. Although undoubtedly agricultural exports have an effect on the environment, the link between the *Export Control Act* and any environmental degradation due to agricultural activity is at best only a tenuous one. The Act facilitates exports but it is not the existence of the Act or anything that it prescribes that impacts on Australia's environment.

The *Export Control Act* does not have a role in promoting sustainable agriculture, but is part of a complex pattern of regulation and control of aspects relating to primary industry. There are bodies better suited to follow-up on the local environmental aspects.

Social welfare and equity considerations, including community service obligations

Social welfare considerations are of little or no relevance to the Act, as far as export facilitation is concerned. Nevertheless, matters of equity are relevant in the manner in which the Act is applied and impacts on industry and individual companies. These issues are examined in the Report. Community service obligations relate to national policy matters concerning exports, such as the process of legislative amendment, and do not impact directly on the

community at large in ways other than covered in the discussion in this Report.

Occupational health and safety, industrial relations, and access and equity

Australian standards on occupational health and safety are the relevant standards, any practices stemming from overseas requirements having to be consistent with them. Industrial relations is not within the direct responsibility of the Act. Access and equity are discussed in general through the Report and constitute one of the cornerstones of its conclusions and recommendations.

The interests of consumers

This Act deals with export matters, and is properly limited to this. However, the presence of the administering body (AQIS) within the AFFA portfolio and the move toward a 'food portfolio' will ensure that consumer interests are properly considered.

1.3 Objectives of the Review

The general objectives of the Review are derived from the Terms of Reference (see Attachment 1). While the *Export Control Act* may cover all exports, the Review has concentrated on food and agricultural products.

More specifically, it has tried to answer the following questions:

- Why, when and how should government regulate in relation to exported food and agricultural products?
- What is the impact of current government regulation on competition in the export food and agriculture industry and on the wider community?
 - What are the benefits?
 - What are the costs?
- Are current government regulatory arrangements for export of food and agricultural products effective and efficient? What improvements are possible?
- What functions and systems could industry introduce which would maintain and enhance safety and reduce costs of compliance?
- What are the impacts of the *Export Control Act* on Australia's food and agricultural industries?

The Committee considered the following areas more intensively.

1.3.1 Impact on Competitiveness

The Committee examined stakeholder views on the prescriptiveness of the current Act, Regulations and Orders in regulating market access, including:

- Does the requirement to meet detailed legislation impose limitations on innovation in industry?
- Do the current requirements, including the need to register premises, constitute a significant barrier for potential exporters?
- Should arrangements be changed to deliver a more effective approach?

1.3.2 Market Access Overseas

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

1.3.3 Purpose of the Act

There are no objectives stated in the legislation. The Committee considered various options and, specifically, input from stakeholders on possible objectives for the Act.

1.3.4 Co-Regulation

Current Government policy gives emphasis to a co-regulatory approach to food safety. This implies a joint commitment from industry participants and government regulators. In the case of exports, co-regulation must also take into account whether or not alternative regulatory mechanisms are acceptable to importing countries. The Committee sought input on the effectiveness of current arrangements and changes which could be introduced by industry to enhance safety and reduce compliance costs.

1.3.5 Prescribed Goods

The Prescribed Goods General Orders (PGGOs) lists the goods to which the legislation applies. Commodities such as dairy, meat and fish are covered by the legislation; others such as wine and sugar are not.

From time to time non-food products have been prescribed under the Act. The notable examples have been coal and woodchips.

The Committee considered questions of equity within and between industries in the operation of the Act. They also considered the issue of what should be prescribed – whether it be limited to health and hygiene matters or whether it should be broader, extending to such matters as trade description and quotas.

1.3.6 Orders under the Act

There is a large number of Orders dealing with specific export commodities, and requirements may be different between commodities destined for the same market. The Committee inquired into the efficacy of the Orders in achieving regulatory objectives.

1.3.7 Standards

There is a number of national and international standards which may apply to goods regulated under the Act. Australia is a signatory to Codex Alimentarius, the international body that develops voluntary food safety standards. Trade agreements between Australia and other nations are subject to oversight by the World Trade Organisation (WTO). Nationally, standards applicable to food production, handling and transport are developed and/or approved by bodies such as the Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ), the Ministerial Council for Food, and Standards Australia. The Committee examined whether current regulatory arrangements took full advantage of relevant standards in developing export opportunities and maintaining access to existing markets.

The Committee examined the adoption of standards and their effect on equity among participants in the industry.

1.3.8 Definitions

The following definitions are relevant to issues raised in this Report.

- **assurance:** provision of a guarantee or undertaking as part of, or instead of, certification for a product or process.
- **audit:** examination of system controls and testing to ensure that a described process is being carried out accurately (in this Review, used to denote checks of company export processes and operations under an arrangement).
- **certification:** documentation required to accompany goods or product providing assurances or statements attesting to facts about the goods. (commonly regarding animal health or public health).
- **co-regulation:** joint regulation of an industry or activity by the industry or activity provider itself in conjunction with some government authority.
- **HACCP:** Hazard Analysis and Critical Control Point – refers to a system which defines critical controls in a process and ‘guarantees’ the process by adherence to defined controls.
- **harmonise:** to make something uniform, eg to make a common set of rules, in the case of the *Export Control Act* referring to outcomes and standards, but not processes.
- **inspection:** the examination of a product or document by staff employed by government or company to detect any unacceptable abnormalities or non-conformity that do not comply with product specifications or requirements.

- **monitoring:** the examination or checking of records, process or system on a regular basis to ensure compliance with known requirements or specifications.
- **phytosanitary:** refers to the plant health and public health requirements in relation to a plant product.
- **prescribed goods:** goods which are prescribed to come under the coverage of the Act.
- **sanitary:** animal health and public health requirements in relation to an animal product.
- **third party:** individual or group who can be affected by an action between two individuals or groups. A third party can be an observer of an action or can provide a service to one of the two main parties.
- **validation:** the testing of a method or system against a known sample to ensure that the test method is suitable and provides an acceptable degree of accuracy, sensitivity and specificity.
- **verification:** the checking, examining or testing of a system or process to ensure that it is correct or true (in this Review, used to denote the checks leading to government certification of export product).