

8. RECOMMENDATIONS

Recommendations are in bold, immediately under the headings, and commentary follows in normal text.

RECOMMENDATION 1

Retention of the Act

The Review Committee recommends that:

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

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

Stakeholders strongly support the retention of the Act.

The Committee considers that the current structure of the Act provides the authority necessary to satisfy overseas governments that their requirements can be met, while the Regulations and Orders allow the administrative flexibility necessary to keep up with the dynamics of international trade. Therefore, the existing structure should be retained.

There are a number of areas, as detailed in the Report and other Recommendations, which require amendment to ensure that the Act remains relevant to exports and fulfils its objectives properly. There is also a need for the Act to conform to competition policy principles.

The current title of the Act does not fully reflect its purpose. The Committee is of the opinion that the word ‘assurance’ conveys more accurately the outcome desired. ‘Assurance’ adds the dimension of industry responsibility to ‘control’ and emphasises to foreign markets that the outcome is the prime focus.

Implementation

Retention requires no timetable. Legislative amendments referred to should be addressed as soon as practicable, in consultation with stakeholders. There will be the usual direct costs involved with amendment of legislation. For general costs and benefits conferred by the legislation, see Chapter 5.

Report References

Ch4 (4.3), Ch5 (throughout), Ch6 (6.2.1-4 & 6.2.8), Ch7 (throughout)

RECOMMENDATION 2

Objectives of the Legislation

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

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

The objective recommended by the Committee is:

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

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

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

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

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

Implementation

Legislative amendments should be addressed as soon as practicable, in consultation with stakeholders. Benefits will include gains flowing from increased clarity of the purpose of the legislation, acceptance from overseas markets, and better industry alignment in Australia. Future legislative drafting and interpretation will be greatly facilitated.

Report References

Ch2 (2.1), Ch4 (4.3), Ch6 (6.2, 6.3.2), Ch7 (7.2 & 3)

RECOMMENDATION 3**Adoption of an Integrated Export Assurance System
(Three Tier Model)**

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

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

The objectives of the three tiered approach are to:

- avoid the current broad practice of imposing the most stringent controls set by one country or group of countries on exports to all destinations,
- eliminate the confusion and additional costs created by the existence of domestic and export systems, and
- avoid the need for exemptions from the Act such as those currently allowed under the meat program.

The coverage under each of the tiers would be as follows:

Tier 1 would relate to exports of food and agriculture products prepared under the requirements of the established Australian standards. The standards would cover the essential health and hygiene issues and would be based on accepted international standards such as those promulgated by Codex, OIE and IPPC.

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

Tier 2 would cover standards set by overseas governments for access to their markets additional to the standards set under Tier 1. Only producers/manufacturers wishing to supply such markets would be required to comply with these additional standards.

Tier 3. There will be occasions when government or industry set special requirements for all exporters of a particular product to a particular market. This may be part of an industry strategy to gain a foothold in a new market or to retain access to an existing market in the face of an unforeseen adverse development or responding to a market failure. Such requirements would be in addition to the domestic (Tier I) and additional to any importing country (Tier 2) requirements.

The Tier system would incorporate HACCP based quality assurance arrangements for risk assessment and risk management.

This concept is central to the Committee's vision, but it is recognised that because of basic differences between products, industries and trade, it may not be implemented in exactly the described form for all products.

Implementation

The implementation process will be long and complex, and will be dependent on commitment of Australian industry and on acceptance by importing countries. No realistic timetable could be set at this stage. Subordinate legislation may need to be restructured.

In the medium to long term, this approach should result in substantial cost reductions for all sectors, particularly the smaller firms. It should remove many of the current distortions and impediments to competition. Benefits will flow from a more targeted export assurance system.

Report References

Ch5 (5.4.4), Ch7 (7.2 – 7.4).

RECOMMENDATION 4

Harmonisation of Domestic and Export Standards

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

Australian industry should be encouraged to produce for a global market with health hygiene and product standards built into production systems. The first step should be to ensure Australian standards are consistent with accepted world standards set by relevant international agencies.

In order to avoid duplication and overlap of regulation, existing Australian standards should be adopted and the government should undertake to promote Australia's standards as suitable for application by overseas governments. Special regard may need to be given to residues.

The harmonisation of domestic and export standards is an important objective for stakeholders associated with the existing Export Control Act. There is a strong consensus favouring a single set of standards.

Implementation

Progress will be dependent on concordance between AQIS, ANZFA, and State authorities. Given that this recommendation is in line with current COAG policy, implementation could be expected within three years. This is a prime recommendation to establish a more efficient and effective process.

Report References

Ch1 (1.3.2 & 1.3.5), Ch2 (2.2, 2.4, 2.7 - 2.9), Ch4 (4.1-4 & 4.7), Ch6 (6.2.8 & 6.2.16), Ch7 (7.1 and 7.4)

RECOMMENDATION 5

Certification by a Single Authority

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

Certification is the declaration that agreed conditions of access into a market have been met, and is currently delivered by a single government-based agency (AQIS). The agreed conditions may allow for shared responsibility between government, industry or third parties for monitoring of export performance, but a single certifying authority is a standard requirement. There is thus no scope to introduce contestability into this role.

In addition certification by a single authority creates a value for individual exporters. The “AI” (Australia Inspected) stamp applied by AQIS when certifying shipments is interpreted as a statement about the condition of the product. It is a recognisable level of assurance—a ‘guarantee’ - and should be retained.

The single certifying body provides a single point of contact for foreign governments, a single identifiable point for origination of policy and the most efficient means of policy delivery. It reduces the impact on industry and provides a body easily identifiable with industry.

Implementation

This recommendation is consistent with existing arrangements. The single body minimises costs and maximises benefit in terms of contact with importing countries, and as a reference point for Australian industry.

Report References

Ch4 (4.9), Ch6 (6.3.4), Ch7 (7.1)

RECOMMENDATION 6

Contestability of Monitoring, Auditing and Inspection

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

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

The current arrangements vary between programs; meat is still reliant on the traditional approach, while organic food and dairy products are virtually working in accord with the “vision in practice” model. Services for live animal exports are now substantially delivered under a contestable system.

The ultimate objective is to have all programs aligned with the ‘vision in practice’ model. The timing of the shift is dependent on overseas government acceptance of third party inspectors. The Committee is aware that the existing arrangements are being progressively reviewed but urges that a timetable for adoption of the model be established for all programs.

The contestability should not extend to the function of certification. As previously stated, The Committee has a firm view that certification should continue to be undertaken by AQIS (Recommendation 5).

Implementation

Adoption will be dependent on securing agreement of industry and overseas governments that third party inspections are acceptable. Implementation should be complete within three years.

Industry should pay no more for services subject to contest, and may be able to secure cost reductions. However, costs of services would no doubt vary to take account of specific conditions such as remote locality and variable processing times.

Once approved, implementation arrangements should be addressed by the relevant program development committee (see Recommendation 12).

Report References

Ch2 (2.5, 2.8, 2.11), Ch3 (3.7), Ch4 (4.4, 4.8), Ch5 (5.3.2, 5.4), Ch6 (6.2.6, 6.2.7), Ch7 (7.1, 7.2)

RECOMMENDATION 7

Scope of the Legislation

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

In recent years, there has been increased consumer awareness that product safety risks extend through the food preparation chain and are not confined to the preparation, handling and storage of end products. This awareness has prompted greater government interest in all stages of product preparation. The notable examples of such awareness and response have been the ban

by a number of countries on beef from cattle raised with assistance from hormonal growth promotants and consideration by governments of appropriate rules to regulate genetically modified foods.

The emerging outcome is a call by governments for new controls on the origin of products and validation of standards set for each processing step. The concepts covered in Recommendation 4 are relevant.

There is authority for such controls under the existing Act, but it is implied. The scope of the existing Act should include specific provision for the imposition of standards through the complete production and marketing chain. In practice, the necessary controls would be established in Regulations and Orders after detailed consultation with industry and State and overseas governments.

Implementation

The Act must have clear authority to keep up with the requirements of foreign governments. The costs of compliance relating to these requirements can therefore not be avoided.

Report References

Ch3 (3.4 – 3.7), Ch4 (4.4, 4.6, 4.7) Ch6 (6.2.8); Ch7 (7.1)

RECOMMENDATION 8

Criteria for Application of Legislation

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

The criteria should include:

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

The adoption of specific objectives and the three tier approach as recommended will provide improved guidance for specific application of the legislation. The key determinant for implementation will continue to be the standards set by overseas governments for access to their markets. There is, however, a need for industry to know in advance how the rules will be applied. Such predictability will facilitate planning and assist exporters to target individual markets and minimise costs.

Implementation

Consultation is required, but the process should be straightforward and achievable within twelve months. Benefits will accrue to industry from

minimisation of costs through greater predictability from better targeted legislation.

Report References

Ch2 (2.3 – 2.5, 2.7), Ch3 (3.9), Ch4 (4.5-6, 4.8), Ch6 (6.2.5, 6.2.6, 6.2.11), Ch7 (7.2)

RECOMMENDATION 9

Certification of Non-Prescribed Goods

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

AQIS currently certifies a number of non-prescribed goods, eg ice cream, biscuits. If this form of certification is required on an on-going basis, such goods should be added to the prescribed list.

Implementation

This will be a routine matter to alter, but requires detailed consultation because of the divergence in views among stakeholders. Increased costs would be negligible and improved benefits will flow from transparency and consistency. AQIS operations will then fall within the letter and spirit of its authorities.

Report References

Ch2 (2.4.1), Ch4 (4.5), Ch6 (6.3.4)

RECOMMENDATION 10

Review of Individual Programs against NCP Principles

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

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

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

Reviews are of particular importance for regulation that operates in the commercial arena. There should be periodic checks against NCP principles as it is government policy to review subordinate legislation regularly, to determine its current relevance. Legislation which is managed and monitored in this fashion will be more in line with the relevant principles, more responsive to business needs, and more likely to “survive” through relevance. Export legislation exerts considerable power, and it is imperative to monitor to ensure that it is fulfilling its objectives rather than imposing irrelevant authority.

Those provisions which should receive the greatest attention are the aspects of regulation related closely to commercial issues, such as prescription.

In order to gain appropriate synthesis between the development of the Act’s objectives and the periodic review of regulation, it will be necessary to define appropriate measurement criteria and establish mechanisms which will enable the measurement to be carried out. The Committee, again, sees this as an important part of the consultation process between government and industry.

Implementation

The process should be defined within six months and implemented by twelve months. Monitoring will involve administrative costs for AQIS, which should be recouped by better targeting and increased effectiveness of the legislation through better information on functioning.

Report References

Ch2 (2.1); Ch4 (4.1, 4.3, 4.8); Ch6 (6.2); Ch7 (7.2, 7.3)

RECOMMENDATION 11

Accelerate the Current Review of Existing Subordinate Legislation

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

The *Export Control Act* is compact, but the subordinate legislation (Regulations, Orders) is lengthy and complex. It is also the part which directly affects the daily operations of exporters. Alteration to regulation may be needed when overseas requirements are altered. Further, clients must wade through voluminous documentation in order to determine applicability. The Committee is of the opinion that a more effective approach is to specify adherence to the requirements of the relevant importing country. Excessive prescriptiveness is anti-competitive, potentially stifling of innovation, and lacks the necessary flexibility. Increased use of Australian systems and standards will also assist in reducing this problem. The Export Meat Orders are already being reviewed to incorporate an outcomes focus and co-regulatory controls. This direction of the review is consistent with the Committee’s views.

The Committee believes that all subordinate legislation applying under the Act should be reviewed with the same specific objective.

Implementation

These reviews should follow the government's assent to action on the recommendations contained in this report. AQIS should adopt a rolling program of reviews, continuing from those currently under way. As QEAC has been instrumental in reviewing a number of export programs, it is to this body to which the task should be given of ensuring that progress is achieved.

Report References

Ch4 (4.3), Ch6 (6.3.3) Ch7 (7.4)

RECOMMENDATION 12

Co-responsibility for Strategy and Program Delivery

The Review Committee recommends that:

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

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

Because the objective is to inject real strategic responsibilities, membership of the individual committees should be limited to, say, six permanent members. However, the committees should be given authority to co-opt temporary members from other Commonwealth or State Government agencies, or other industry experts where appropriate.

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

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

Implementation

Consultation should commence immediately, with the process be completed within twelve months. Increased effectiveness will have efficiency dividends for industry.

Report References

Ch2 (2.3.1, 2.6); Ch3 (3.8); Ch4 (4.4); Ch6 (6.3.2); Ch7 (7.2, 7.4)

RECOMMENDATION 13

Electronic Commerce

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

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

Accessibility to information that may change frequently is an issue for current or potential exporters. Competitiveness depends, in part, on the ability of industry and individual businesses to identify and respond to opportunities.

AQIS has a commitment to E-Commerce and its implementation should be accelerated. The coverage, accessibility, costs and timetable for extension of the existing facilities should be addressed by the Development Committees to be established (see Recommendation 12).

The Commonwealth Government's Office of Government On-line (OGO) has considerable expertise and resources to increase effectiveness in this area.

Implementation

This is a continuing initiative, with development costs, but it has been shown that the system has the potential to reduce costs both for the administrative system itself and for industry through reduced charges and greater efficiencies.

Report References

Ch3 (3.8, 3.9); Ch6 (6.2.13); Ch7 (7.1)

RECOMMENDATION 14

Implementation

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

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

Recommendations for this Report have been framed to support Government policy on food regulation matters, and to indicate those areas where policy needs to be refined or extended. This Recommendation covers the intergovernmental links and the controls needed to ensure that Report Recommendations are put in place.

A combination of operational level and policy level action will be required in AQIS to give appropriate support to the realisation of the Recommendations.

Implementation

Action should commence immediately, with the agenda being defined within six months, and with annual reporting on progress, incorporating stakeholder comments.

Report References

N/A (refers to other Recommendations).