

## 2. STRUCTURE AND ADMINISTRATION OF THE *EXPORT CONTROL ACT*

### 2.1 Origins of the Act

The *Export Control Act* was enacted in 1982 in a period of crisis. The origins of the crisis were the export to the USA of kangaroo and horsemeat labelled as beef. Limited quantities of meat prepared as pet food also entered the export chain. A specially established Royal Commission later concluded that:

malpractice in the nature of commercial cheating has been widespread in the export industry.

The crisis created a public outcry in Australia. A severe loss of confidence in Australia's inspection arrangements seriously threatened continued access for Australian meat to the US and UK markets. This, in turn, reflected adversely on the status of the Australian government's guarantee for all exports of food and agricultural products, not just meat.

Although the Act does not include specific objectives, the then Minister stated, when introducing the Bill to Parliament:

The purpose of this Bill is to establish a new and comprehensive legislative base for the export inspection and control responsibilities within my portfolio. Under existing arrangements, export inspection powers are drawn from the Customs Act 1901 and the Commerce (Trade Descriptions) Act 1905. This has created a number of administrative and legal weaknesses. Although these could be overcome by amending the existing legislation, the Government has taken the view that the most appropriate long-term response is to develop new and separate export inspection legislation, which ensures a more efficient and flexible legal framework.

The Bill provides for the application of export controls to goods specified in regulations; spells out inspection responsibilities and the authority of inspection staff to carry out these responsibilities; and sets penalties to apply in the case of fraud or deliberate malpractice. Whilst the inspection powers under the Bill are to be exercised by officers of the Department of Primary Industry, the Bill also provides for the Secretary to the Department to authorise carriage of such powers as are appropriate by other people. This is to cover the situation where officers of other Commonwealth and State instrumentalities, and in certain instances people under contract, carry out specific or specialised inspection functions on behalf of the Department of Primary Industry. (Second Reading Speech on the introduction of the *Export Control Bill 1982*, 22 April 1982)

The explanatory memorandum for the legislation stated that stringent controls within Australia were an essential pre-requisite to maintaining export markets for primary products. The proposed legislation provided for such controls with appropriate penalties for their contravention.

The introduction of separate legislation in the form of the *Export Control Act* provided a stable but flexible legal framework for controlling food exports.

The Act established the Export Inspection Service, which subsequently became known as the Australian Quarantine and Inspection Service.

The Act came into force on 1 January 1983. It has not been heavily altered since that date but Orders prescribed under the Act – subordinate legislation – have been amended and new Orders have been established in line with changes in markets and industries, and in accord with international trade agreements.

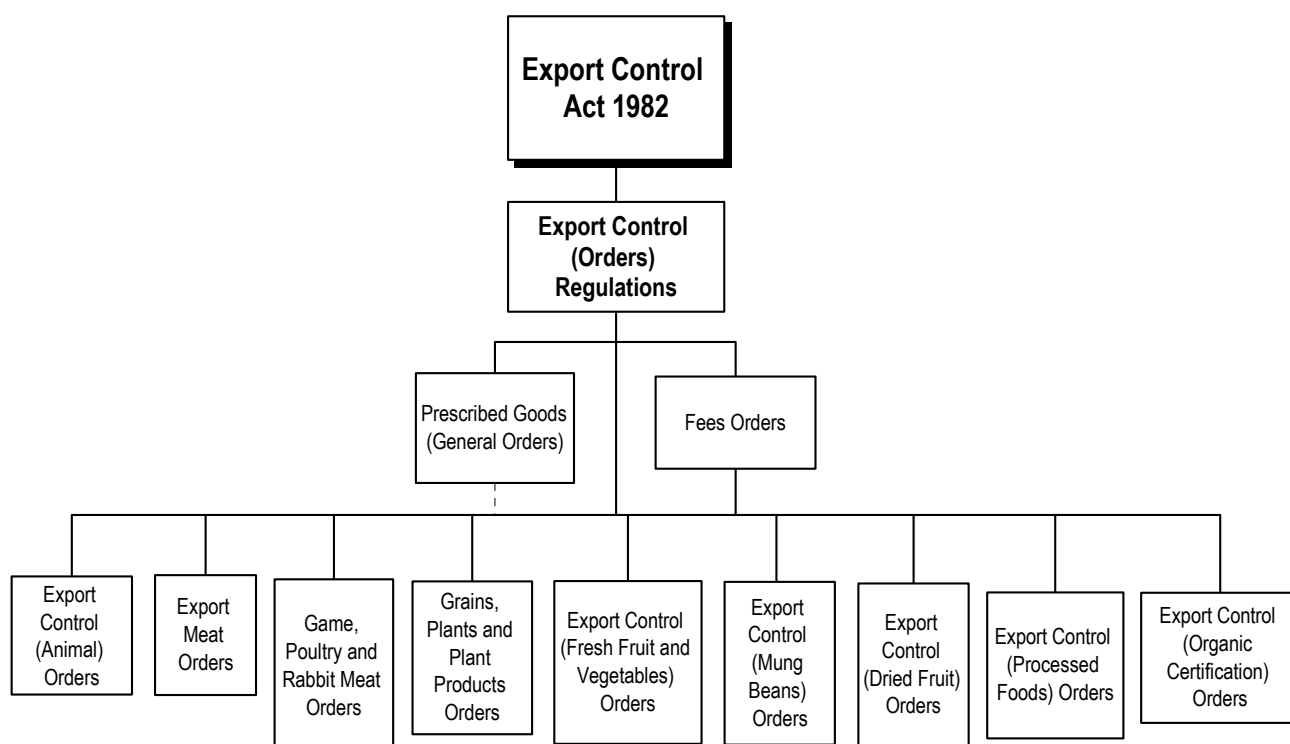
## 2.2 Structure of the Act

The Act provides for certain products – mainly food – to be prescribed and allows the export of goods subject to certain conditions specified in the legislation. The Act imposes penalties for non-compliance with its provisions, including for malpractice and fraudulent behaviour. It also gives AQIS inspectors a number of powers including the right to inspect goods, premises and records. In addition, AQIS inspectors have the power, at their discretion, to issue export certification.

Subordinate legislation, in the form of Regulations and Orders, specifies the administrative arrangements and actual controls that apply to individual commodities. These are referred to as the Export Control (Orders) Regulations and the Prescribed Goods General Orders (PGGOs). A third grouping of Orders – Fees Orders – sets charges for registration of premises and for AQIS inspection and audit activities. The subordinate legislation has enabled the Act to incorporate technological and administrative developments easily, thus facilitating increased responsiveness to changes in the international trade environment.

The overall structure is set out in Figure 2.1.

**Figure 2.1 Structure of the Legislation**



While the initial objective of the Act related to export regulation and control, it has been used primarily to ensure the health and safety of food for the export market. The Act has also been used to satisfy other conditions of trade. These include satisfying quality standards, product descriptions and limitations placed on market access by overseas governments.

## 2.3 Powers Specified in the Act

Provisions in the legislation include:

- the power to request inspection of prescribed goods,
- the power to sample and assess export consignments with the authority to reject product from export and, if necessary, to seize and detain product that does not comply with the regulations,
- the power to enter and inspect premises, including fishing vessels, in order to determine whether goods are produced and stored under conditions which ensure that they are wholesome and safe for human consumption,
- the power to require conformity with legitimate importing country requirements that are additional to the requirement of the Act, Regulations and Orders,
- the power to issue certification attesting to the safety and wholesomeness of prescribed goods,
- the power to register premises subject to compliance with defined requirements,
- powers for discretionary issue of certificates to meet specific importing country authority requirements,
- authority to impose sanctions and penalties for non-compliance,
- creation of offences for misuse of official marks, applying false trade descriptions and making false declarations, and
- a requirement to keep records relating to matters relevant to the operation of regulations and make these available for review by inspectors.

### 2.3.1 Compliance

The objective of a regulatory system is to obtain compliance with its provisions. In the case of regulation such as the *Export Control Act*, this compliance is most successfully engendered by industry capability and maturity. It is most important to build a culture of compliance. Consultation and the partnership process are of singular importance. In the first instance, compliance will never be achieved unless the industry is largely self-regulating on this issue. It is in the interests of industry to take the long term approach. It is more effective if the regulating authority – AQIS in this case – has the role of auditor and certifier than ‘policeman’. Industry has told the Committee that

quality assurance systems offer the prospect of stricter control (through continual monitoring, audit and evaluation) than periodic visits by an inspecting authority. The quality assurance systems push companies to improve processes continually rather than get by with the minimum needed to achieve compliance under an inspection-based regime.

RMAC wrote of:

the need for robust audit systems to verify consistent administration of AQIS export certification requirements across agencies. There should be strong sanctions available to be used against non-compliance.

Non-compliance, or the potential for non-compliance, is an ever-present threat, and mechanisms are required to ensure compliance and to stop acts of non-compliance. These take the form of sanctions. Two basic types are available, punitive and operational.

- Punitive sanctions consist of penalties or fines, which can be imposed for not complying with legislative requirements. The legislation must specify the penalty or fine, which should apply for specific breaches.
- Operational sanctions can constitute such measures as a higher level of inspection/audit, incurring extra audits, incurring costs for rectification, or removal (temporary or permanent) of the ability to operate in the industry.

A range of court imposed penalties applies for offences against the Act. The Act allows for imprisonment ranging from six months to five years. Fines of up to \$50,000 can also be imposed for offences against the principal Act, but more often, a fine of \$1,000 can be imposed for offences against the regulations. Registration requirements contained in the legislation require persons of integrity to manage and control registered premises. Where a person has been convicted of an offence against the Act, or any other law of the Commonwealth or a law in force in a State or Territory, AQIS has the legislative authority to refuse or revoke export registration.

The refusal to grant registration, or to revoke it, is one of the administrative sanctions available to AQIS. Others include revoking export permits, refusing certification and suspending operations of registered premises. Such operational sanctions are potentially a much greater deterrent to non-compliance than the threat of court imposed fines.

Operational sanctions are generally more effective as they can be imposed administratively, applied promptly and targeted to encourage compliant behaviour. Importing countries usually expect effective sanctions to be built in to legislative arrangements which underpin export certification.

Changes to the Criminal Code also mean that the specification of the penalties in the *Export Control Act*, as with other acts, requires review.

## 2.4 Subordinate Legislation

The subordinate legislation covers the prescription of goods for specific export controls. The Act gives unlimited scope with respect to the prescription of food and non-food items. However, only limited ranges of export goods are made subject to the operation of the Act. Currently, 'prescribed goods' include meat (including game, poultry and rabbit) dairy products, fish (including crocodile meat), eggs and egg products, dried fruit, mung beans, grains, plants and plant products, processed fruit and vegetables, fresh fruit and vegetables and products labelled as organic.

The use of subordinate legislation rather than the customary approach of covering all requirements in the wording of the Act was adopted to provide the flexibility necessary to deal with a diverse range of importing country requirements and the need to be able to respond quickly to changes in such requirements.

The PGGOs establish the broad requirements applying to all goods prescribed under the Act. Generally, this includes detailed requirements for registration of establishments, construction standards of premises, packaging of goods for export, trade description of goods, official marks and marking devices, sampling requirements, role of authorised officers, penal provisions and mechanisms for reconsideration of decisions made under the Orders.

Fees Orders apply to all prescribed goods and set the level of charges for registration of establishments, inspection charges and fees for audit activities.

Commodity specific Orders set out another layer of detailed rules which build on the specifications contained in the PGGOs. Examples of matters dealt with under specific commodity Orders are:

- specifications for processing establishments (construction, equipment, facilities etc),
- routine inspection procedures,
- operational requirements (good manufacturing practice, hygiene measures),
- risk based hazard assessment and process control (HACCP),
- approval of quality assurance arrangements, and
- trade descriptions.

Specific commodity orders aim to reflect, as much as possible, relevant international requirements and standards. Changes are made to commodity specific Orders to reflect changing importing country requirements.

### **2.4.1 Non Prescribed Goods**

#### **(i) Export Goods not prescribed under the Act**

There is a range of agricultural commodities and food products which are exported but not controlled under the Act. These include rice, sugar, grocery items, prepared foods, wine, juices, bakery products, breakfast cereals, pasta and confectionery. These products are not prescribed under the Act because government to government certification is not generally required. A related reason for not prescribing certain foods is that some products are routinely subjected to additional processing in the importing countries. This further processing may correct or eliminate any health or hygiene concerns that may have existed. Some export products such as ice cream, processed fruit and vegetables, and honey were taken off the prescribed goods list in the mid 1980s in response to industry views that these products were already adequately controlled by industry measures. For non prescribed commodities, including commodities never prescribed under the Act, AQIS may, if requested, provide export certification. The purpose would be to assure matters such as Australian origin and availability for sale for human consumption in Australia.

#### **(ii) Export Goods controlled by other Legislation**

Provision for export control or selling arrangements for some agricultural commodities such as sugar, wine and horticultural products is covered under other legislative arrangements.

#### **(iii) Export Goods certified by AQIS but not prescribed under the Act**

Certificates are also issued by AQIS for such non-prescribed goods. An example of this is certification of skins and hides exported to the European Union.

In providing certification for non-prescribed goods to facilitate exports, AQIS operates without coverage of the Act or other Commonwealth statutes. If this form of certification is continued, consideration should be given to providing the appropriate legislative cover.

## **2.5 Operation of the Export Control Act**

### **2.5.1 Structure and Operations**

The portfolio responsibilities for export control using the Act rest with the Minister for Agriculture, Fisheries and Forestry. Administratively, the Act is managed by the Commonwealth Department of Agriculture, Fisheries and Forestry, also known as AFFA. The Secretary of the Department is the delegate for the purposes of powers contained in the Act and subordinate legislation.

The day-to-day operations of the Act are managed by the Australian Quarantine and Inspection Service (AQIS) which is one of five administrative

'groups' in AFFA. AQIS operates a series of commodity specific programs from a central base in Canberra. Programs are further coordinated through offices in capital cities and major regional centres, and deployment of field staff at export registered facilities. The meat program is the largest export program administered by AQIS and operates a full range of services under the legislation. This includes registration of premises, provision of inspection staff and routine audit of export establishments. Other programs encompass the registration function, however inspection and audit may be conducted by third parties depending on program arrangements.

AQIS also performs a program evaluation role in addition to routine audit of compliance with the requirements of the Act and its subordinate legislation. These program level evaluations are conducted at least annually.

All programs are equivalent in that the requirements laid down are consistent with, and generally based on internationally agreed public health, animal health and phytosanitary standards as defined by Codex Alimentarius (Codex), the Office International Epizooties (OIE) and International Plant Protection Convention (IPPC) and the Agreement on the application of Sanitary and Phytosanitary Measures (SPS) under the World Trade Organisation (WTO). The primary purpose of all these agreements is to make standards that protect human animal and plant health, whilst facilitating international trade (see Chapter 3.6 also).

### **2.5.2 Monitoring and Co-regulation**

The programs are not identical in respect to the specific requirements (such as compliance monitoring and inspection) that have to be met before exports can occur and the measures for monitoring compliance and inspection arrangements under these programs, which in some cases allow for non-AQIS supervision. Inspection and assurance arrangements within a program may incorporate:

- constant on line supervision by AQIS inspectors, an example being veterinary inspections in meat plants,
- on line supervision by third party inspectors approved by AQIS such as veterinary inspection of live animal exports,
- supervision by third parties or company employees (depending on the industry) under Approved Quality Assurance Arrangements that allow exporters to implement quality assurance systems under mutually agreed conditions, these being subject to audit by AQIS (the fish program, for example), and
- Certification Assurance (CA) arrangements under which export establishments develop their own QA system to ensure that products meet nominated export requirements, with AQIS auditing the quality system to establish that export conditions can be satisfied, rather than inspecting each export consignment (eg grains and plants).

The combination of AQIS and company controls which comprise the regulatory system is referred to as co-regulation. This term reflects complementary responsibility/supervision undertaken by companies/AQIS respectively.

Adoption of these more flexible arrangements is possible to some degree in all current export programs. The degree of acceptance of these arrangements by importing countries varies and is a limiting factor on wider adoption. As far as the importing country is concerned, certification under co-regulatory arrangements must carry the same level of authority and independence as arrangements based on government inspection.

### 2.5.3 Exemptions

Exemptions from the legislation are allowed, and are specified in the PGGOs. These fall into two classes.

In the first, legislation provides a discretionary mechanism for exemption in the case of:

- commercial samples,
- experimental purposes,
- exceptional circumstances, and
- special commercial circumstances.

The second allows exemption in the case of the export of meat, game, poultry and rabbit meat from establishments that are not export registered, and is detailed in its specifications. This dates from 1997.

Between January and October 1999, AQIS issued 99 exemptions. Since 1986, the most exemptions issued in any one year was 254 (in 1994), and the least, 6 (in 1987).

AQIS also administers the import or quarantine measures which are set out in the *Quarantine Act 1908*. Some overseas trading partners have criticised Australia on the level of quarantine restrictions imposed on imported goods. There needs to be consistency in the scientific assessment of risks associated with both imports and exports. This is the basis for negotiating bilateral and multi-lateral trade arrangements.

## 2.6 Consultative Mechanisms

Consultative mechanisms are an aid to ensuring that provisions of legislation are properly and equitably applied. Consultation is also a means of ensuring 'best practice' methods for achieving the objectives of any legislation are developed cooperatively between industry and government.

A Ministerial consultative committee has been appointed to advise government on administration of the legislation implemented by AQIS, which includes the *Export Control Act*. This consultative committee is called the Quarantine and Export Advisory Council (QEAC) and meets five or six times annually. Strategic issues and directions for AQIS export programs are included within QEAC's terms of reference.

A series of Industry Consultative Committees (ICCs) has been established by AQIS on a commodity basis. Through these committees, AQIS undertakes consultation with exporters. The issues covered in this consultation process include overseas government requirements, the basis for negotiating protocols on market access, and service delivery arrangements. Fees and charges are also discussed. Notably, the committees do not appear to have made any serious effort to focus on strategies and longer term policy issues. This point was raised in the QEAC review of the horticulture program.

The following is a list of AQIS ICCs of relevance to export industries:

- AQIS (Meat) Industry Task Force
- AQIS Airline Industry Consultative Committee
- AQIS Grain Industry Consultative Committee
- AQIS Industry Cargo Consultative Committee
- AQIS Meat Industry Charging Review Committee
- Biologicals Industry Consultative Group
- Dairy Export Industry Consultative Committee
- Export Meat Industry Advisory Committee
- Horticulture Industry Consultative Committee
- Imported Food Consultative Committee
- Livestock Export Industry Advisory Committee
- Organic Produce Export Committee
- Post Entry Plant Industry Consultative Committee
- Seafood Export Consultative Committee

These committees meet at frequencies varying between annually and quarterly. The terms of reference of all AQIS ICCs were broadened in 1997-98 to include the full range of operational issues, including fee matters.

Discussion of fees has been a major undertaking of most committees, as this has been a controversial topic now that AQIS programs run on a full cost recovery basis.

## **2.7 Certification Under The Act**

Certification of exports of food, live animals, animal products and plant products, is a major outcome of the Act. Commodities which are prescribed under the Act are usually exported accompanied by an AQIS certificate. Certification may relate to sanitary or phytosanitary standards, or other health or process requirements, as agreed with the importing country.

Certification of export goods by AQIS represents confirmation of one or more of the following:

- that government to government assurances have been met,

- that inspection has been carried out during preparation of the goods to protect public health, and
- that specific market access requirements have been met including product labelling and description to maintain the integrity of the product.

Rather than certifying on the basis of AQIS inspection of all products, AQIS may be certifying that ongoing, approved systems are in place (as is the case for dairy or meat products). In some cases, third party audits are part of the assurance system which is certified by AQIS.

In general, the details given at the time of certification reflect market requirements and the level of public health risk thought to be associated with the product.

### **2.7.1 Health Certification**

Health certificates signed off by AQIS may include either:

(a) a direct statement by AQIS about some characteristic of the product (to meet market requirements),

or

(b) a declaration by the exporter which is subsequently endorsed by an AQIS officer.

Certification is usually on the basis that ongoing, audited systems are in place at the processing establishment and that AQIS is satisfied that these systems meet importing country requirements. AQIS does not always need to visit the place of processing to establish these facts, and hence supporting evidence may be requested from the exporter before endorsement is made. Recently AQIS has expanded the role of third parties in the required audit and inspection activities which support ongoing systems for assuring food safety.

### **2.7.2 Phytosanitary Certification**

Certificates attest that consignments have been inspected according to appropriate procedures and are considered to be free from quarantine pests, and practically free from other injurious pests, and are considered to conform with current phytosanitary requirements of the importing country. Schedule 3 of the Orders details the conditions for issuing phytosanitary certificates. They are issued from one government to another under the International Plant Protection Convention.

The certificates are not issued or intended for commercial usage. Although AQIS acknowledges that phytosanitary certificates are referred to in commercial transactions, exporters are strongly discouraged from agreeing to letters of credit that stipulate any endorsements on phytosanitary certificates.

When the importing country requires it, the phytosanitary certificate may include additional declarations relating to such things as freedom from seeds of weeds, specific pests, or details of any treatments applied. For instance, wheat exported to China must be generally free from the weed seed *Lolium temulentum* (commonly known as darnel, drake or bearded ryegrass).

### **2.7.3 Fit for Human Consumption**

Where an endorsement is made that the product is 'Fit for Human Consumption', AQIS presence at the time of processing or a visit to the establishment is used as the basis for endorsing the certification.

Establishments processing food for export on a regular basis are subject to routine audit arrangements which are administered by AQIS, and include visits to the establishments and an audit rating. Importing countries have access to the findings of these audits on request.

### **2.7.4 Quality Assurance and Certification**

In line with government policy, AQIS has encouraged the adoption of quality assurance and third party delivery of audit and inspection functions.

Quality assurance arrangements may cover inspection requirements, trade descriptions, treatment of goods and standards applied to premises registered for export.

Quality assurance and third party arrangements are incorporated in export programs to the extent that these arrangements are adopted as meeting importing country requirements.

### **2.7.5 Electronic Export Documentation**

The Export Documentation (EXDOC) system supports the preparation of export documentation for produce prescribed under the *Export Control Act* and associated legislation. The system has been in place since 1992. Initially for meat exports, it has been available for dairy exports as well since late 1998. It forms an integral part of overall AQIS procedures which ensure product meets Australian and importing country standards.

The system works as follows:

- The exporter (or freight forwarder) who is linked to the EXDOC system electronically enters details of proposed exports.
- EXDOC system accepts the details and checks against a database whether the establishment or origin is eligible to export (based on results of AQIS inspections/audits) and whether the product is eligible.
- The AQIS inspector approves.
- Where the establishment and product are eligible, EXDOC issues an export permit and a health certificate (if required) to enable export.
- Exporters or freight forwarders with appropriate printers may print certificates on site otherwise certificates are printed by AQIS and collected by the exporter.

The EXDOC system is able to act as the Customs agent for exporters using a system known as the Single Electronic Window. An exporter sends to EXDOC 'Request for Permit' information which is processed, and EXDOC

transmits information relevant to the Customs to the EXIT system. A single response message is then transmitted to the exporter. This process ensures that EXIT and EXDOC data are fully reconcilable.

## **2.8 Operation of Programs by Commodity Group**

The operation of the Act varies among industries depending upon domestic and international requirements.

Some examples by commodity group are provided below.

### **2.8.1 Processed Foods (including dairy and fish)**

Not all processed food exports are controlled by the Export Orders. Exports of processed foods that come into the ambit of the Export Orders include processed meat (including pet foods), dairy products, egg and fish products (including crocodile), dried fruit and certain frozen and canned fruits and vegetables. In general, whether exports of processed foods are controlled depends on a variety of factors including:

- the requirements by importing countries for government-to-government certification, inspection and quarantine,
- the necessity for securing and maintaining market access, and
- food safety and plant and animal health reasons.

Most countries require certificates for processed foods before they will allow products to be imported. The detail specified on the certificate varies according to market requirements.

Exports of processed foods are controlled under several Export Orders, including the Export Meat Orders; the Game, Poultry and Rabbit Meat Orders; the Export Control (Processed Food) Orders; the Export Control (Dried Fruit) Orders; the Export Control (Organic Certification) Orders and the Grains, Plants and Plant Products Orders.

The Export Control (Processed Food) Orders detail specific requirements for registration of premises, hygiene standards for the production of dairy, fish and egg products, including structural requirements, inspection systems and trade descriptions to be applied to the products.

- Specific export orders operate under the Act for dairy produce. These orders specify a range of requirements including construction, procedural and microbiological standards to be met when producing for export. They also specify labelling requirements and provide the mechanism by which AQIS can prevent the export of dairy products unless certain prescribed conditions are met.
- The Orders also provide the basis for issuing certifications regarding the fitness of the product.

For certain commodities, eg fish and dairy, approved quality assurance arrangements, audited on a regular basis by AQIS, are used by industry to demonstrate compliance with the requirements specified in the Orders.

### **2.8.2 Meat and Meat Products**

In the case of red meat, the Export Meat Orders set out a detailed and prescriptive set of requirements to be met for export of product to specific markets (where relevant). The range of requirements included in the Orders reflects the large number of countries that import meat from Australia and the fact that meat has traditionally been a heavily regulated commodity from the point of view of food safety. The Meat Orders are the most detailed and prescriptive of the specific commodity Orders under the Act.

Export meat processing establishments must be registered and have approved quality assurance programs in place before they can engage in the export trade. AQIS provides routine inspection and veterinary supervision as required at registered establishments and also conducts monthly or quarterly audits of registered establishments in accordance with importing country requirements.

Meat exporters must also be licensed under the *Australian Meat And Livestock Industry Act 1997* (the AMLI Act). The *Export Control Act* and its interaction with the AMLI Act may place additional costs and unnecessary regulation on the exporters of red meat, and the live export of cattle, sheep and goats. This aspect of the regulation imposed by the *Export Control Act* needs to be reviewed in conjunction with the AMLI Act.

As mentioned previously, certification of meat exports is provided through an electronic system operated by AQIS (EXDOC), generating certification for each consignment. The certification is verified and signed by an AQIS veterinary officer. There are over 130 countries importing meat from Australia under certification arrangements.

### **2.8.3 Live Animals and Animal Reproductive Material Exports**

Exporters of live animals must meet requirements specified in the Export Control (Animals) Orders. These orders set out the animal health, vaccination and animal welfare standards which must be met before AQIS provides export health certification and export permits under the authority of the *Export Control Act*. In addition, exporters of live cattle, sheep and goats are required to be licensed under the AMLI Act, and are also required to implement the industry quality assurance (QA) scheme made mandatory by that Act.

Export of merino reproductive material is controlled by the Livestock Export Merino Orders under the *Export Control Act*. Under these provisions exports of female breeding material are banned, except to New Zealand. Export of rams is allowed subject to a quota of sales at designated export auctions of 800 per year. Semen from rams on a register of semen donors, to which studs can designate up to a total of 100 rams per year, can also be exported. Rams may be exported free of quota to New Zealand and there is provision for approval of scientific projects.

Australia's policy towards the export of merino reproductive material has been reviewed on many occasions, most recently in 1994. Successive governments, while making some concessions to allow the export of some merino breeding rams and semen under controlled conditions and export of merinos for slaughter have maintained a policy of restricted exports.

#### **2.8.4 Grains, Plants, and Plant Products**

The Grains, Plants and Plant Products Orders under the Act currently cover wheat, barley, oats, sorghum, lentils, field peas, lupins, vetch, mung beans, chickpeas, faba beans, and soybeans. The Orders facilitate compliance with importing country trade description and phytosanitary requirements (plant health and pest issues) and prevent the export of prescribed and/or certifiable produce that does not comply with the orders.

Grain inspection at loading is provided by AQIS using contract inspectors. Quality assurance arrangements are also utilised by companies to demonstrate compliance with export requirements.

AQIS also certifies, under these Orders, a range of plant products, in relation to phytosanitary issues and other matters, as stipulated by importing country requirements.

#### **2.8.5 Organics**

The export of organic produce is regulated by the Export Control (Organic Certification) Orders.

The National Standard for Organic and Bio-Dynamic Produce sets out minimum requirements for the production, processing and labelling of organic produce and requires that all exporters are certified with an accredited industry organisation. The organic produce industry previously liaised with AQIS on a voluntary basis, but this was formalised with the enactment of the Export Control (Organic Certification) Orders. These Orders adopt the National Standard as the basis for export certification of organic produce.

Organic Produce Certificates are provided by private companies accredited by AQIS. These companies are audited by AQIS against the National Standard for accreditation in Organic Certification.

## **2.9 Setting Standards within Australia (Domestic Arrangements)**

ANZFA is a statutory authority established under the Australia New Zealand Food Authority Act 1991. ANZFA's principal function is to develop and review the standards relating to food available in Australia and New Zealand. ANZFA is not responsible for either implementing or enforcing food standards. Its role is to develop and review standards and to make recommendations to the Australia New Zealand Food Standard Council (ANZFS). In 1991, the Commonwealth, States and Territories agreed to implement food standards under State and Territory food legislation, by reference and without

amendment once adopted by ANZFSC. ANZFA is currently reviewing the Food Standards Code against National Competition Principles and is looking to harmonise domestic standards with those of Codex Alimentarius (Codex) where appropriate.

ANZFA does not have an active role in setting standards for the meat industry. This is carried out by ARMCANZ. This body comprises State and Territory Ministers and agencies with jurisdiction in the agricultural portfolio, and is chaired by the Commonwealth Minister for Agriculture, Fisheries and Forestry. Standards developed by ARMCANZ also rely on adoption through State legislation to take effect. Current legislative requirements as detailed in the *Export Control Act* and its subordinate legislation do not align in every instance with these domestic standards.

A perceived difference in standards between goods produced for domestic consumption and those produced for export generates confusion and sometimes mistrust in the minds of consumers locally and overseas. This issue has prompted a number of recent review reports, particularly *Food: a growth industry - The report of the Food Regulation Review* (1998) – the “Blair” review, which reported serious concerns about the inefficiency of the food regulatory system in Australia. The existing system was considered complex, fragmented and wasteful, and key recommendations of the Blair report were :

- that the regulatory burden on the food industry be reduced by reviewing regulations that restrict competition or impose costs, and
- that an integrated national food regulatory system be implemented to reduce inconsistencies, duplication and unnecessary costs.

## 2.10 Other Legislation

The *Export Control Act* is one of several Commonwealth and State Acts with jurisdiction over the production or export of agricultural commodities or food products. Attachment 3 lists some of the Acts which overlap with or duplicate functions under the *Export Control Act*.

The *Commonwealth Customs Act 1901* has the closest match with the powers and objectives of the *Export Control Act*. The *Customs Act* is designed to identify goods which are subject to special (export) control arrangements to:

- preserve Australia’s reputation as an exporter of quality products,
- preserve native flora and fauna, and
- protect Australia’s strategic and foreign policy interests.

Primary products including meat, dairy products, eggs, animals, fish, grains, vegetables and fruit are all subject to export control under the *Customs Act*.

A permit for export of these goods is issued under the *Customs Act* but the detail of production, labelling and packaging requirements for export is left to the *Export Control Act*.

## **2.11 Comparison of the Complexity of Legislative Arrangements in AQIS Export Programs**

The charts on the following pages provide a schematic view of two different export systems: meat and dairy. Each of these programs is at a different stage in the continuum from full regulation to industry-based responsibility. For the sake of showing the principal flows clearly, these charts only give a general view, omitting the more technical and administrative aspects.

Some steps are common to all export legislative flows and are represented by similar flows, an example being the core of international arrangements and activities covered by the *Export Control Act* (steps 1 – 6).

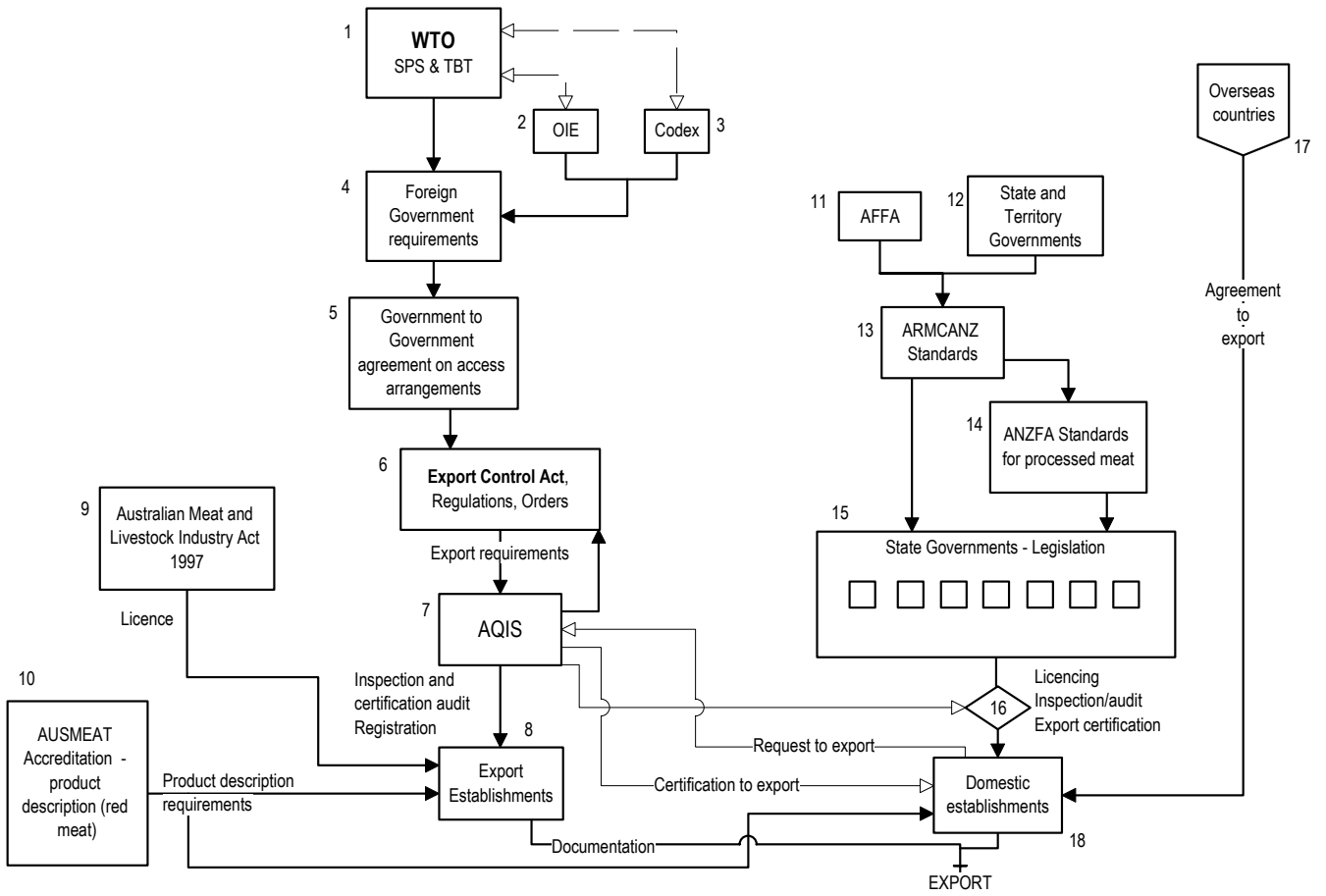
The system closer to full regulation is meat. It is a system characterised by mandatory AQIS inspection procedures and a plethora of bodies involved in setting and administering the standards and export controls. Some of this has evolved from the nature of the product and human health requirements, and it has, over time, produced a layered system which is complex and inflexible. Further complexity has been added by the introduction of a policy allowing export from domestic registered premises, with alternative licensing, registration and certification procedures.

Dairy, which is subject to risks similar to those that apply to meat, is characterised by a sophisticated manufacturing system which has moved on to setting its own technical standards for product safety and quality. Over time, regulation has been streamlined to reflect a reduced government role and an increasing role for company-based quality assurance. Registration is more integrated and audit also introduces further simplicity and directness in external systems. Some steps in the dairy diagram reflect the greater involvement of the dairy companies in the control process. Systems internal to exporters are more complex because of the need to demonstrate and document the compliance of systems with established procedures, whereas, end-point inspection leaves more responsibility with the inspecting authority.

The long-term policy of AQIS is to move from the more inspection-based systems to those characterised by co-regulation or partnership. The underlying principle is that the exporter's own management and administrative systems should closely align with the required quality systems and therefore save resources (in complying with inspection) while increasing effectiveness.

Similar diagrams apply to Fish, Grains, Live Animals and Organics, and these can be found at Attachment 7.

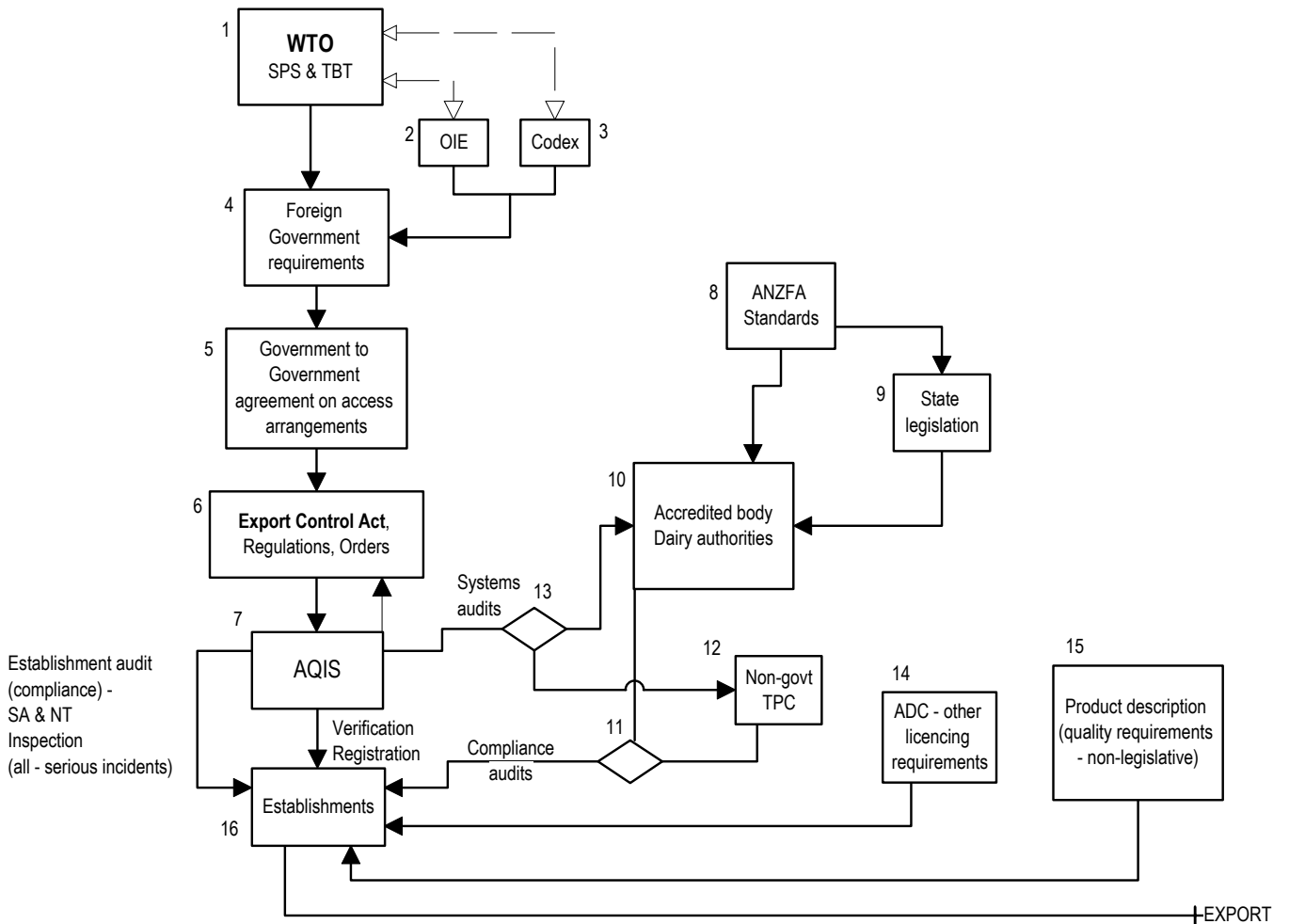
**Figure 2.2**  
**Legislation and Operations: Meat**



### Legislation and Operations: Meat Description

1. **WTO:** Australia is a signatory to the SPS Agreement and the TBT Agreement, which, were designed to prevent countries turning to food safety and quarantine restrictions as a means of protecting their agricultural industries. (See Chapter 3.6)
2. **OIE:** Office International Epizootique – Australia is a signatory – Government agencies can certify freedom from certain diseases, and there is an obligation to notify for disease outbreaks. There is exchange with the WTO.
3. **Codex:** The Codex Alimentarius Commission is an international inter-governmental body that develops food safety and commodity standards to facilitate trade and promote consumer safety. There is exchange with the WTO.
4. **Overseas governments:** Overseas governments have standards for entry. Exporters must conform with these standards, irrespective of their conformance with domestic standards, unless a special agreement has been reached.
5. **Government to Government agreements:** These cover the specific conditions by which food is exported to the overseas country and meets its requirements. This does not duplicate the special agreement referred to in (4) above).
6. **Export Control Act:** This, with the Regulations and Orders, provides the regulatory basis for Australian food exports.
7. **AQIS:** AQIS has responsibility for the *Export Control Act*, including policy advice and execution of functions.
8. **Inspection etc:** AQIS has responsibilities for inspection and audit (as applicable), registration and the verification of the licence. However, an independent veterinarian may also perform the functions of inspection and audit.
9. **Licence:** An AMLI Licence for cattle, sheep and deer meat is required to export.
10. **AUSMEAT:** Accreditation by AUSMEAT is required in terms of product description, both for export establishments, and for domestic establishments which export.
11. **AFFA:** AFFA has input into the relevant ARMCANZ standards affecting exports.
12. **States:** States have input into the relevant ARMCANZ standards affecting exports.
13. **ARMCANZ Standards:** ARMCANZ standards specify codes and standards of practice for exporters.
14. **ANZFA** promulgates standards for processed meat, which are implemented under State legislation.
15. The **State Governments** administer legislation which is consistent with relevant ARMCANZ and ANZFA standards.
16. For **export from domestically registered establishments**, State Governments are generally responsible for licensing, inspection/audit and Export certification. In certain circumstances, AQIS may be responsible for the functions covered in (16), but this is not the preferred option.
17. **Export from domestically registered establishments** is usually originated by a request from an overseas country (which would come about as part of normal market processes).
18. When all requirements are fulfilled, export can occur.

**Figure 2.3**  
**Legislation and Operations: Dairy**



### **Legislation and Operations: Dairy Description**

1. **WTO:** Australia is a signatory to the SPS Agreement and the TBT Agreement, which, were designed to prevent countries turning to food safety and quarantine restrictions as a means of protecting their agricultural industries.
2. **OIE:** Office International Epizootique – Australia is a signatory – Government agencies can certify freedom from certain diseases, and there is an obligation to notify for disease outbreaks. There is exchange with the WTO.
3. **Codex:** The Codex Alimentarius Commission is an international inter-governmental body that develops food safety and commodity standards to facilitate trade and promote consumer safety. There is exchange with the WTO.
4. **Overseas governments:** Overseas governments have standards for entry. Exporters must conform with these standards, irrespective of their conformance with domestic standards, unless a special agreement has been reached.
5. **Government to Government agreements:** These cover the specific conditions by which food is exported to the overseas country and meets its requirements. This does not duplicate the special agreement referred to in (4) above).
6. **Export Control Act:** This, with the Regulations and Orders, provides the regulatory basis for Australian food exports. Experience in AQIS and with stakeholders is used to tune the legislation to what is needed.
7. **AQIS:** AQIS has responsibility for the *Export Control Act*, including policy advice and execution of functions. AQIS also has responsibility for compliance audits in South Australia and the Northern Territory.
8. **ANZFA:** Standards are drafted by ANZFA which are implemented under State legislation in their food-related legislation, and also apply to third parties under State control (eg Dairy authorities). ANZFA standards also apply directly to these organisations.
9. **State legislation:** This sets the food standards, and also contains specifications relating to the establishments (which are in turn audited by the accredited bodies, see step 10).
10. **Third Party Accredited bodies:** Compliance audits are conducted by the third parties, usually State dairy authorities. Accreditation comes from the State governments and auditing from AQIS.
11. **Compliance audits:** These may be undertaken by the Dairy authorities or a non-Government third-party certification provider.
12. **Third-party certification providers** (non-Government) can be appointed, and are subject to audit from AQIS in the same manner as the Dairy authorities.
13. AQIS conducts **systems audits** of service providers.
14. **The Australian Dairy Corporation** licences establishments.
15. There are product description requirements relevant to dairy.
16. When all requirements have been met, export can occur.

## 2.12 Committee's Assessment of Key Points

### Structure and Powers of the Act

- *The structure of the Act and its subordinate legislation is appropriate for facilitating and sustaining exports of food and agricultural products.*
- *The powers in the Act are sufficient to address a threat of market failure. This capability has been demonstrated on many occasions since the Act came into force.*
- *The necessary sanctions and penalties are available under the Act to address a potential failure in the export assurance system.*
- *There are no specific objectives stated in the legislation. This shortcoming should be rectified.*
- *The legislation does not include specific criteria or guidelines for the prescription of goods under the Act. Guidelines would help ensure the Act is applied in a more transparent manner.*
- *The Act does not stand alone. Its effectiveness is often dependent upon activities in other jurisdictions (mainly States).*

### Administration and operations under the Act

- *Administration of the Act relies on co-operative arrangements between agencies of the Commonwealth and overseas governments.*
- *AQIS operates as the sole service provider in most of the export programs under the Act. There is progress toward greater contestability for services but some importing countries will not accept delegation of the inspection role from Government to a third party.*
- *The regulatory system involved in controlling the export chain is overly complex. The number of agencies involved means duplication and extra costs. The Committee supports the conclusions of the Report of the Food Regulation Review, that is, a single set of regulatory controls for food production in Australia.*