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| **Australian Government** |
| **Department of Agriculture, Fisheries and Forestry** |

**Australian Quarantine and Inspection Service**

**REGULATION IMPACT STATEMENT**

**Amendment of the**

***Export Control (Plants and Plant Products) Orders 2005***

**1 August 2011**

OBPR No: 12659

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## INTRODUCTION

This Regulation Impact Statement relates to the review of the *Export Control (Plants and Plant Products) Orders 2005* (the Orders) and the *Export Control (Hay and Straw) Orders 2005* madeunder the *Export Control Act 1982* (the Act).

Certain plants and plant products exported from Australia are defined as ‘prescribed goods’ for the purposes of the Act*.* Prescribed goods are subject to regulatory control as a condition of export eligibility. The Orders contain conditions and restrictions applicable to the export of plants and plant products, which aim to ensure that these products:

* meet importing country requirements
* have been prepared to meet Australia’s phytosanitary obligations under the International Plant Protections Convention (IPPC)
* are safe and suitable
* are accurately described
* are prepared according to a system that can be audited, and
* are appropriately certified where necessary.

The ultimate objective is to facilitate trade and protect Australia’s markets. The basis for this degree of regulatory control is summarised by the National Competition Policy review of the *Act[[1]](#footnote-1)*.

The Australian Quarantine and Inspection Service (AQIS), an operating group of the Department of Agriculture, Fisheries and Forestry (DAFF), administers the Orders*.* The Orders were promulgated on 1 July 2005 and made under the *Export Control (Orders) Regulations 1982*. They were based on domestic and international standards, as well as importing country requirements.

In December 2008 the Government released an independent review of Australia’s quarantine and biosecurity arrangements by a panel chaired by Mr Roger Beale AO (Beale Review). The review recommended significant changes to Australia’s biosecurity system to improve its ability to deal with changing and increasing biosecurity risks.

One of the key recommendations was that export certification functions should return to full cost recovery, placing a greater focus on both DAFF charges and the efficiencies of the inspection system. There was a need to improve the system and gain efficiencies for DAFF and industry along the supply chain without compromising the integrity of the services provided.

In April 2009, the Minister for Agriculture, Fisheries and Forestry established joint Industry / AQIS Ministerial Taskforces (MTF) representing each of the six affected export sectors (including grain and horticulture) to explore alternative service delivery arrangements for DAFF export certification and inspection in line with recommendations of the Beale Review. An objective of both the Grain and Horticulture MTFs was to make recommendations for changes to Australia’s export legislation and current inspection models to ensure they were transparent, up to date, flexible and consistent with current and future industry practices and market requirements.

## NATURE OF THE INDUSTRY

World trade in agricultural products is more complex and involves greater government intervention than trade in most other products and services. This arises from governments managing the risks associated with such products, including risks to plant health and threats to animal health, human health and the environment.

Many of the risks originate from the fact that plants and plant products:

* + can harbour pests, diseases and other organisms;
	+ can harbour weed seeds and other contaminants;
	+ may require special storage and/or transportation arrangements; and
	+ can carry risks to plant health that are not physically conspicuous, e.g. viruses, fungi and insect eggs.

Through the *Export Control Act 1982* and its instruments, Australia manages these risks for a range of exported products including nursery stock, fresh fruits, fresh vegetables, prescribed grain, mung beans and hay and straw and any other product requiring a phytosanitary certificate by the importing country.

For plants and plant products, effective management of these risks is essential, as their export is significant to the Australian economy. Freedom from these risks enhances Australia’s reputation as an exporter in the international market place.

Grain, sheep and beef cattle farming employed 148,250 people nationally in 2009-10, while horticulture and fruit growing employed 63,250[[2]](#footnote-2). Together this represents around two thirds of total employment in agricultural production in Australia.

Major export grains include barley, canola, chickpeas, dried field peas, faba beans, lentils, lupins, oats, mung beans, sorghum, soybeans, and wheat. The gross value of Australian grain and oilseed production for 2009/10 was $9,184m, with exports accounting for $6,115m of that[[3]](#footnote-3). Australia’s major markets for grain and seeds include Indonesia, Japan, China and Korea.

Plant export industries produce a wide variety of fruit, vegetables, nursery products and cut flowers. Major horticultural sectors include table grapes, macadamias, garden plants, cut flowers, potatoes, citrus and apples. Horticultural food production was valued at $6,905m in 2009/10 with unprocessed exports valued at $622m2. Among Australia's most important export markets for horticulture are Japan, the USA, Singapore, Hong Kong and Malaysia.

The annual value of fodder production in Australia in 2009-10 was $1.6 billion[[4]](#footnote-4). Australia is the world’s second largest exporter of hay and hay products (mostly cereal hay) with around 19% of the value of world exports between 2002 and 2006. Japan is the world’s number one importer of hay and hay products and the volume of Japanese imports have been rising at about 3.6% per annum. Japan typically accounts for more than 85% of Australian fodder exports and 99% of exports to Japan are cereal hay or chaff (mostly oaten hay).

There are over 1,100 export registered establishments in Australia to which the Orders apply. Registered establishments are sites that DAFF have approved as being constructed, equipped and operated in an effective and hygienic manner and as such is suitable for the preparation of prescribed goods for export. Prescribed goods intended for export must be prepared for export at a registered establishment.

## PROBLEM

The main problem with the Orders is that they are highly prescriptive and inflexible. In addition to specifying standards, the Orders also specify how those standards should be interpreted and achieved through particular inspection, loading, treatment and other procedures which are defined in detail. This level of prescription means that the Orders are unable to accommodate technological and administrative changes within the industry.

For example, the schedule referring to the inspection of prescribed grain for which a phytosanitary certificate is required (Schedule 6) describes the location, method, procedure and rate of sampling as well as the technologies and loading infrastructure involved.

Schedule 5, regarding inspections of ship’s holds, specifies the kind of treatment that should occur to achieve particular pest contamination standards. For example it states that if a heavy infestation of insects is detected (defined as 50 or more in total of all insect stages (Sch. 5, cl. 20(a)(iii))), then the infestation should be treated by fumigation, except where the infestation involves “psocids, cockroaches and mites” in which case they must be sprayed (Sch. 5, cl.21.1(d)). This prevents the use of potentially more effective alternative technologies, and does not allow a treatment to be tailored to the nature or context of the particular infestation.

This level of specification is both cumbersome and costly in its implementation and stifles innovation. It prevents the introduction of technological or operational changes that could reduce costs to both business and AQIS, and which could potentially improve the effectiveness of inspections.

The Orders specify the point in the export chain where inspections and sampling must occur, imposing a common model on an industry which uses a range of export pathways. For example, the current Orders cater for the pre-shipment inspection of shipping containers, but do not permit the pre-inspection of grain at export terminals. The current Orders specify that relevant grain is inspected at the end-point of the process.

Where a product is packaged into bags, the Orders require that a sub-sample is taken from one in every five bags at the point of export before it can be exported. This involves piercing the bags at random, breaking the seal and reducing the hygienic or preservatory benefit gained from the bagging process. This leads to costly repairs, unnecessary handling and wastage. The Orders also prevent inspectors from taking account of any industry quality assurance regime which may be more stringent and may have already occurred further up the export chain.

The Orders currently include requirements that do not relate to export certification requirements, and simply duplicate measures that already apply through other mechanisms. For example, section 12 states that “…dried fruits must conform with the Australia New Zealand Food Standards Code…”, a requirement that does not need to be duplicated in the Orders.

The Orders do not allow for electronic communication so all approvals must be managed through the sighting of hard-copy certificates and the filling in of hard-copy forms. This can lead to delays and increased costs.

The Orders provide for a system of Approved Arrangements (AAs), where particular establishments, facilities, equipment and services are authorised to prepare goods for export in a way which complies with the Orders and requires no further routine inspection of shipments by AQIS. While this system attempts to tailor arrangements to suit individual businesses, it is costly and complex to implement. Every application for an AA requires case-by-case assessment and approval. One of the standards for approving an arrangement is that “the applicable requirements of these Orders are complied with”, so the rigidity of the Orders are largely embedded in each of the AAs.

Holders of an AA are not required to supply information to AQIS’s Audit Management System, so it is costly to audit compliance with an AA. Where non-compliance is detected, the only sanction or penalty available is revocation or suspension of the AA, a relatively blunt instrument for what may be a minor transgression. While some aspects of the AA system are attractive because they can reduce costs to industry, it is a relatively cumbersome approach with some unnecessary inflexibility.

The export of hay is currently covered by the *Export Control (Hay and Straw) Orders 2005* (the Hay Orders)*.* These separate orders were developed to manage the risk of Corynetoxin (CT) contaminating Australian hay and straw exports, following an episode in which livestock died after eating fodder exported from Australia.

The operational provisions in the Hay Orders largely duplicate sections of the *Export Control (Plants and Plant Products) Orders 2005.* This adds unnecessary regulatory complexity and requires both DAFF and exporters to implement multiple parallel management systems and provide parallel guidance materials.

The Grain MTF engaged a consultant to review Australian and competitor legislation and operating systems with an objective to ensure that Australia’s approach is matching or exceeding world’s best practice. Key considerations during the review were aligning the legislation to technological developments and current industry practices, and reducing prescriptive regulation so that equivalent systems that provided for the same outcome could be considered. Through the Grain MTF, the consultant identified opportunities for change and areas for expansion of industry/government partnership arrangements:

* expanding the role of AQIS-approved inspectors/authorised officers by industry to cover sampling and inspection tasks within export facilities, while DAFF concentrates on verification, governance, training and transitioning of approved arrangements to the new Service Delivery Model (SDM);
* shifting the regulatory emphasis from prescriptive detail to outcome-based standards;
* adopting an inspection and audit model based on classifying export products according to a hierarchy of risk;
* facilitate, enhance and sustain Australia’s exports by providing systems which ensure compliance with:
	+ IPPC obligations;
	+ overseas country requirements; and
	+ any other relevant standards that enhance safety or improve market access;
* ensure consistency, efficiency and flexibility in regulatory implementation and service delivery, to:
* minimise interpretation issues;
* provide for ease of amendment and review;
* ensure industry specific issues are addressed, including flexibility for certification of plants and plant products;
* include capacity for recognition of compliance with equivalent standards;
* improve efficiency and effectiveness in delivery of export certification services along the export supply chain; and
* enable an effective transition to an improved export certification and inspection system thereby reducing the cost of DAFF’s services to export industries.

In summary, the review has found that the Orders are outdated and difficult to use due to their complex structure. The Orders have not undergone a comprehensive review since their inception and have not kept pace with technological and operational changes within the grain and horticulture industries. During this period, there have been significant changes in industry infrastructure, trade and technological developments.

This has created an inefficient environment for exporters and operators of registered establishments who are experiencing difficulty in complying with obsolete elements of the Orders. Consequently, the legislation is becoming an impediment to the efficient and effective export of compliant product.

## OBJECTIVES

The objectives are to address the review’s findings by:

* addressing the identified inflexibility of the current Orders; and
* ensuring that legislation is up-to-date and accurately reflects both industry and DAFF’s obligations and responsibilities.

## IDENTIFICATION OF OPTIONS

Three options have been identified:

*Option 1 Removal of regulatory controls*

*Option 2 Retention of existing regulation*

*Option 3 Adoption of recommendations of the review*

***Option 1:******Removal of regulatory controls***

Under this option, the Orders would be repealed and replaced by a significantly simpler set of orders that would only address the phytosanitary requirements of importing countries. These are the only elements that require government-to-government certification under the IPPC.

The Orders would be reviewed to become more outcome focused compared to the highly prescriptive nature of the current Orders. Various elements within the Orders and existing schedules would be transferred to instructional material such as the Plant Exports Operational Manual. This material could be amended as required without the necessity to amend legislation but supported by a review mechanism of the respective industry consultative committees.

The market would be left to develop and comply with any self-regulatory arrangements it chose to initiate for other matters. These would be likely to cover contaminant standards and labelling, both of which assist in gaining or retaining market access but are not phytosanitary requirements. Participation in the self-regulatory program would be voluntary.

To ensure consistency of approach on these matters, the market would be likely to establish its own standards body to take on some of the functions currently undertaken by AQIS. This would operate alongside AQIS, at minimum providing guidance and interpretive material to industry. DAFF would continue to provide certification services for government-to-government phytosanitary requirements.

***Option 2: Retention of existing regulation***

The current Orders contain detailed requirements on the export of plants and plant products which include:

* registered establishments
* conditions and restrictions
* export certification and trade descriptions
* approved arrangements
* procedures and requirements for inspection and sampling.

These would continue to be implemented. The Orders deliver a recognised system of inspection and certification that assists Australian exporters to gain access to markets with stringent phytosanitary requirements. The level of inspection and certification is tailored to meet the requirements of individual export markets. All mechanisms are currently in place to implement this option.

***Option 3: Adoption of recommendations of the review and endorsements of the Ministerial Taskforces***

The Orders would be reviewed to:

* become more outcome focused compared to the highly prescriptive nature of the current Orders. Various elements within the Orders and existing schedules would be transferred to instructional material such as the Plant Exports Operations Manual. This material could be amended as required without the necessity to amend legislation;
	+ provide for an expanded role for non-government employees, who could be appointed under Section 20 of the Act as authorised officers (AOs). These officers would be authorised to carry out certain inspection functions under the Act. AOs would be able to undertake inspections at convenient times and locations for the exporter. This approach would be supported by a more robust DAFF audit and verification mechanism;
	+ provide flexibility to move inspection points up the supply chain rather than relying only on end-point inspection. It would allow, for example, for the inspection of produce before it is bagged, rather than requiring the sampling of bagged produce. It would also allow for shipping bins to be inspected and loaded with produce before they are transported to the point of export while maintaining phytosanitary integrity;
	+ streamline legislation with the incorporation of the *Export Control (Hay and Straw) Orders*. All plant commodities would be subject to common provisions where applicable, reducing unnecessary inconsistencies in requirements between different plant commodities;
	+ remove some requirements that do not affect phytosanitary standards or other importing country requirements, where these are duplicated in legislation administered by other authorities; and
	+ provide for flexible streamlined business processes including electronic communication and verification.

## IMPACTS

This Regulation Impact Statement seeks to quantify, where possible, the costs and benefits of the three options and their impacts. As well, qualitative costs and benefits are described.

 Parties affected by the proposals include:

* + industry
* exporters of plants and plant products
* other sectors of the supply chain including storage establishments, wholesalers, freight forwarders, etc.
	+ Australia’s trading partners and their importers who may face new shipment arrangements for products they are receiving
	+ Government
* DAFF
* Overseas’ authorities.

 Given the value of plants and plant products exports, any disruption to these industries would have a recognisable impact on the performance of the Australian economy, particularly for rural producers and the loading/handling and transport sectors. The continued viability of these industries is dependent upon overseas consumer confidence about the safety, wholesomeness and integrity of plants and plant products.

***Option 1:******Removal of regulatory controls***

Costs

While this Option may allow more flexible arrangements the direct costs to industry could rise. However the exact cost of arrangements in an industry regulated environment is difficult to quantify, as it would depend on industry’s judgement about which services it wished to continue to provide, the level of risk it was willing to bear, and the cost sharing arrangements it settled on within the sector. Financial cost to industry could be high initially in order to develop self-regulatory arrangements. The ongoing financial cost of maintaining these arrangements would also fall to industry.

If the services that industry developed were similar to those currently provided by DAFF, the total cost of both industry plus DAFF services would be expected to be higher than the current DAFF only model, as economies of scale would be foregone.

There is also a set of potential indirect costs associated with this option. Firstly there is a risk of loss of market access. Australia’s main export markets may be concerned by a change from independent certification by a government agency (DAFF) and may reduce or halt imports from Australia. Industry would be responsible for resolving market access issues with relevant overseas authorities and importers. As there is a multitude of Australian grain and minimally transformed horticulture products spread across a relatively large number of export markets it would be very difficult to quantify the cost to Australian producers and associated export industries for loss of markets.

Secondly there is a risk of loss of investment in the industry, given the potential uncertainty about what constitutes compliance with market requirements.

Thirdly, industry would be responsible for the development and application of uniform export standards in terms of basic trade description and freedom from pests and contaminants and in the absence of these there may be a risk of harming Australia’s reputation as a reliable trading partner. In the international market, grain in transit is often on-sold several times before it is unloaded in a final buying country – where the import requirements can be different from the standards taken into account at the original inspection. Without uniform Australian export standards, importers could not be assured of the product’s phytosanitary status and Australia’s good reputation could suffer as exporters would be responsible for ensuring that uniform standards are applied.

 Fourthly, where an importing country does not require any form of certification, less scrupulous exporters, motivated by short-term gain rather than the best interests of the industry in the long-term may send sub-standard product overseas. This risk would be exacerbated by the necessarily voluntary nature of a self-regulatory scheme. Australia’s good reputation could slide back to where it was in the 1950s when contaminated and mislabelled produce was being traded. Our poor export performance at that time prompted industry to request the phytosanitary regulations that now apply.

During the current review of service delivery, industry stressed that Australia must compete on quality, including ‘phytosanitary quality’. This was considered critical for continued market access and market advantage. For these reasons there was no support within industry for this option.

Benefits

Reduced government intervention in the export chain could lower compliance and input costs when dealing with less stringent markets. The extent of any benefits under this option, however, would depend on the type of self-regulation implemented.

***Option 2: Retention of existing regulation***

Costs

The total recoverable cost to Government of administering the Orders in 2010/11 was $19.5m comprising $11.4m for the Grain Export Program and $8.1m for the Horticulture Export Program. The Grain Export Program largely recovers its costs; however the Horticulture Export Program has been running a deficit of approximately $1.2m per annum in recent years.

Without reforms to the SDM and the fee structure, total costs are expected to rise. These increases have been modelled for the years 2010-11 and 2011-12. For the Grain Exports Program the increase over this period is 18%[[5]](#footnote-5) while for the Horticulture Exports Program it is 15%[[6]](#footnote-6).

Industry considers that the current Orders impose unnecessary costs on them because of their inherent inefficiencies (described in section 3 above). Furthermore, they raise the risk of the loss of market access in the future by restricting responsiveness to any new requirements from trading partners. Quantifying the cost of this risk is difficult, as the consequences of not meeting importing country requirements vary. They include such considerations as the cost of returning the goods to Australia, destruction costs, loss of market for a particular good, entire commodity grouping, or in extreme cases the loss of market for other commodities as well. It is also possible that losing market access in one country could result in other countries also restricting access.

This option does not effectively and efficiently address all of the objectives in section 4 above. Whilst trade is facilitated, the impost on industry increases, potentially decreasing its competitiveness, access to markets and limiting innovation and flexibility.

Benefits

There are minimal benefits for stakeholders under this option, other than the certainty of retaining the current requirements and minimal compliance changes. The Government would continue to under-recover its costs for provision of DAFF’s services and as such there is no incentive for industries to drive efficiencies in the export system.

Staying with the current system would obviate the cost to government of amending the Orders, although funding to do this has been provided by the Export Certification Reform Package (ECRP).

***Option 3:******Adoption of recommendations of the review***

Costs

This option presents a one-off direct cost to Government of reviewing and implementing the Orders. This includes the dedication of staff to prepare the Orders and supporting material, legal assistance during the preparation and the training of AOs to ensure a consistent approach in interpreting and applying the new outcomes-based Orders. Estimated costs to Government for the Grain and Horticulture Export Programs are $150k for drafting legislation and $500k for training. Provision has been made for this cost under the ECRP.

There is a short term cost to industry of making the transition to the new approach. In particular there would be a need to implement new management systems for the move from a prescriptive regulatory environment to a less prescriptive, outcomes-based one. This may be partially offset through guideline material and training which would be prepared and provided by DAFF, as well as through the provision of free training for AOs during the initial 12 months of the new program (see Implementation and Review below).

This change may be more challenging for some businesses to deal with than larger ones. They may lack suitably qualified staff to assist the transition into the new regulatory environment. However, as DAFF will continue to provide all the inspection and certification services it currently does, businesses can choose whether they adopt the new approach or not.

Benefits

This option provides a number of direct operational benefits which will lead to cost savings to both DAFF and industry:

* The net cost to businesses will be lower for two reasons;
* the change in the fee structure and the new regulations associated with the new SDM will allow DAFF to provide its services more efficiently, and in a more targeted fashion, thus reducing the costs recovered from business; and
* rather than paying DAFF to provide inspection services, the AOs employed directly by these businesses are expected to provide these services at lower cost. This is because the AO will be integrated more effectively and efficiently into the business than an external DAFF authorised officer can be. These AOs will be able to provide their services at more convenient times to the business and to do it in conjunction with their other responsibilities within the business;
* by allowing inspection to occur up the supply chain from the end-point, industry can more efficiently manage expensive infrastructure costs, such as shipping;
* DAFF’s intervention will be based on risk and performance, therefore the verification costs will be lower for businesses that are compliant;
* an outcomes-based regulatory system will give industry more flexibility to adopt innovative practices;
* the simplification of the regulatory elements in the Orders will lead to more streamlined business processes including the use of electronic documentation, and reduce the duplication of data and forms.

The new SDM should result in substantial cost reductions for all sectors, particularly for smaller businesses that face proportionally higher compliance costs, and remove many of the current distortions and impediments to competition.

As the benefits of the new SDM and fee structure will vary from business to business, the savings to business are difficult to estimate directly. For the Grain Exports Program, the new SDM and fee structure is predicted to reduce recoverable costs by 6% in 2011-12 compared to the current SDM, and by 36% in 2013-14. For the Horticulture Exports Program the new SDM and fee structure is predicted to reduce recoverable costs up to 16% in 2011-12 compared to the current SDM.

Government administrative costs will be reduced due to:

* streamlined regulatory processes,
* greater harmonisation with other Australian legislation,
* improved performance monitoring, allowing government services such as audits to be more efficiently targeted; and
* reduced monitoring and enforcement costs due to higher levels of compliance.

The new SDM is part of a package of measures which includes a new fee structure that aligns to the SDM and recovers cost. Industry acceptance for the new fee structure is predicated on a new SDM being implemented.

In addition to these direct financial benefits, there is likely to be an increase in regulatory transparency and predictability which should improve long-term market access. A more robust standards-focussed regulatory structure backed by consistent training, audit and verification will improve consistency in interpretation of the regulations. This will help to maintain Australia’s reputation as a supplier of quality produce.

#### RIS Summary

|  |  |  |
| --- | --- | --- |
| **Option** | **Impact on** | **Likely benefit / comment** |
| **Industry** | **Government** |
| 1: Removal of regulatory controls | * High short term costs to develop self-regulatory arrangements
* Increased business risk due to uncertainty about market requirements
* Possible loss of market access
 | * Damage to Australia’s trading reputation
 | * Reduced costs to Government
* Reduced compliance costs for industry when exporting to less stringent markets
 |
| 2: Retention of existing regulation | * High compliance costs due to regulatory complexity
* Inflexibility to adopt new inspection, production or export systems
* Unnecessary testing required
* Duplicate regulatory and management systems required
* No incentive to improve efficiency
 | * Cost recovery deficit of $1.2m per annum
* Difficult to ensure compliance
 | * Facilitates trade
* Accepted by markets
* No adjustment costs
 |
| 3: Adoption of recommendations of the review and endorsements of the Ministerial Taskforces | * Short term cost to industry to make the transition, partially offset through Government support
* More challenging transition for smaller businesses than large
 | * Short term cost of reviewing and implementing the Orders
 | * Lower net costs to industry in the long term
* Greater flexibility to adopt new technologies and methods
* More efficient targeting of government intervention based on risk and performance
* More streamlined business processes and reduced duplication
* Improved long-term market access
 |

## CONSULTATION

***Process***

Consultation regarding export reforms has occurred through the grain and horticulture ministerial taskforces since these commenced in 2009. These MTFs include broad industry representation as well as Australian Government representatives (see table below).

|  |  |
| --- | --- |
| **Grain MTF** | **Horticulture MTF** |
| Australian Cotton Seed Industry | Antico International P/L |
| Australian Fodder Industry | A S Barr Export  |
| Australian Grain Exporters Association | Australian Mango Industry  |
| Australian Nut Industry Council | Australian Horticulture Exporters Association |
| Australian Oilseeds Federation | Centre West Exports |
| Australian Seed Federation | Citrus Australia |
| AWB Ltd | Costa Group |
| CBH Group | DAFF |
| DAFF | Fruit Growers Tasmania |
| GP McMullen Consulting | Horticulture Australia Ltd |
| GrainCorp Operations | Ironbark Citrus and Grapes |
| Grain Producers Australia | La Manna Group |
| Grain Trade Australia | Nursery and Garden Industry Australia |
| National Grains Australia | SA Citrus Industry development Board |
| Pulse Australia |  |
| SunRice |  |
| Viterra |  |

The MTFs consultation strategies included:

* MTFs’ industry representatives consulting with their industry members;
* face to face meetings with industry and other stakeholders;
* industry Issues Paper inviting industry and other stakeholder input;
* circulation of a propose SDM paper for comment;
* consultant’s meetings with stakeholders;
* consultant’s questionnaire for industry and other stakeholder input;
* MTF communiqués and fact sheets circulated to industry stakeholders through the AQIS Industry Advice Notice circulation list (This list incorporates exporters of grain and horticulture products); and
* MTF websites providing information for stakeholders on the export reform process.

Broad consultation on the reform agenda has occurred through industry representatives with their member organisations. Stakeholder communiqués providing updates on the reform were also published.

The Export Certification Reforms [Issues Paper](http://www.daff.gov.au/aqis/export/export_certification_reform_package/grain-mtf/grain-export) was released for comment to members of the Australian grain, seed and fodder industries, on 8 April 2010.

The Grain MTF engaged a consultant to conduct an analysis of Australian and competitor legislation and operating system’s to ensure Australia’s approach is at, or better than, world’s best practices. The consultant’s report was delivered on 4 October 2010.

The SDM paper with recommended options was circulated to grain industry stakeholders in October 2010. The SDM was circulated to horticulture industry stakeholders in December 2010.

The MTFs considered the broad direction of the regulatory reforms identified from the consultation processes above at a number of meetings and proposed particular legislative amendments to address these reforms.

***Summary of Consultation Comment***

The [Issues paper](http://www.daff.gov.au/aqis/export/export_certification_reform_package/grain-mtf/grain-export) released for comment to stakeholders of the Australian grain, seed and fodder industries in April 2010 was designed to ensure that the Grain MTF included in its initial deliberations, all key issues of concern for stakeholders. An element of the issues paper was legislation reforms. Feedback from this paper was through both written submissions and information/discussion sessions held around the country. There were 15 written responses received and a summary of these submissions is provided at Appendix 2. Most comments related to:

* Industry requiring a flexible inspection system coupled with legislation that enables industry to develop inspection methods based on their own export operations. For example, investigating the use of ship bin inspection and pre-shipment inspection for bulk exports as per containers.
* AQIS approving inspection arrangements on the basis of a recommendation of a third party and industry adopting approved systems such as a QA scheme.
* Removing the duplication of inspection activities performed by AQIS and industry and utilising existing industry sampling and inspection processes.
* Reviewing the potential for use of on-board fumigations where low levels of insects are detected.
* Considering options for vessel inspections at anchorage and for removal of the requirement for multiple inspectors on the vessel prior to approval for loading.
* Simplifying inspection arrangements of small parcel and bag exports.
* The lack of recognition of inspection systems across the supply chain by importing country authorities

The respective SDM options papers were circulated to 925 grain and 673 horticulture export stakeholders for comment. Only 25 stakeholders responded in relation to the Grain SDM and 15 to the horticulture SDM. A summary of the responses is at Appendices 3A and 3B. “Questions and Answers’ papers were also prepared to address the issues raised in response to the SDMs (Appendices 4 and 5).

A summary of the proposed amendments to the legislation is at (Appendix 1). A similar document was presented to the Grain MTF meeting on 11 March 2011 and the Horticulture MTF on the 24 March 2011. The Grain MTF endorsed these amendments to the legislation. The Horticulture MTF endorsed the approach of making legislation less prescriptive and more outcomes focussed but did not comment on the proposed amendments. The Horticulture MTF members were asked to provide details of any legislative amendments they believed would provide improved flexibility to the legislation.

Although the Horticulture MTF accepted the proposed approach to the legislative review at its 24 March meeting some members have subsequently withdrawn their support for the horticulture SDM and have raised a number of concerns with the proposed horticulture legislative reform.

The comments mainly related to de-prescribing horticulture exports to markets that do not require phytosanitary certification; approved arrangements; container inspections; exemptions for small weights; costs to industry; the consultation process and combining the horticulture and grains requirements into one set of orders. A summary of these issues is as follows:

* *Prescribed goods*: All horticulture products will continue to be prescribed goods. Prescribed goods are subject to regulatory control as a condition of export eligibility.
* *Approved Arrangements*: There is no phase out period for approved arrangements. Existing approved arrangements can continue to operate.
* *Container Inspections*: There are no changes regarding the requirement for container inspections. The *Export Control (Plants and Plant Products) Orders 2005* state that prescribed goods “must not be loaded after inspection into containers or container system units unless they are clean and free from pests and contaminants” (Part 4 order 9 (c)). This is an international obligation for Australia as a signatory to the International Plant Protection Convention.
* *Consignment Weight Limits*: The 10kg exemption for goods being exported as a sample is still present; it is contained in the *Export Control (Prescribed Goods* –*General) Order 2005* (Part 2.01 (g) (ii)) and remains the same.
* *Combination of grain and horticulture commodities into the one order*: The current *Export Control (Plants and Plant Products) Orders 2005* is one set of orders for plant and plant products. The orders parallel Australia’s international obligations as a signatory to the International Plant Protection Convention. These international standards apply to plant and plant products collectively. If there are instances whereby different processes are required between horticulture and other plant products this can be detailed within the legislation where required.
* *Costs to industry*: There will be efficiency gains for exporters as result of the addition of increased flexibility of outcome based regulation.
* *Consultation process*: As outlined above there has been extensive consultation.

More recently however, during regional visits DAFF plant export managers have received positive feedback supporting the proposed export reforms for both the grain and horticulture export industries.

## CONCLUSION AND RECOMMENDED OPTION

A review of the current export regulations for plants and plant products was necessary due to the changing needs of the export industry and its trade partners.

Three options were considered:

***Option 1 –******Removal of regulatory controls***

There are significant disadvantages to largely deregulating the export of plants and plant products, despite the prevailing trend towards deregulation. In the recent review, industry made it clear that it wanted DAFF to continue regulating exports on behalf of exporters of plants and plant product.

Industry recognises that less scrupulous individuals, motivated by short-term gain, are willing to sacrifice the long-term reputation of the industry for personal profit. Industry leaders, however, see the need for an independent regulator (AQIS) to control trade description, and sanitary and phytosanitary aspects of exports of plants and plant products, in the national interest over the long term.

***Option 2 – Retention of existing regulation***

This option is potentially costly for industry and government, with a trend of increasing costs. This option does not:

* encourage business operators to have confidence in the application of the regulation
* provide Government with confidence in the application of the regulation
* support export initiatives for Australia to compete more effectively on world markets
* address the review recommendations of the Ministerial Taskforces
* provide any long-term assurance of facilitating market access
* provide incentives for efficiency in both government and industry.

 ***Option 3 – Adoption of recommendations of the review***

This option has significant on-going benefits to government and industry. It is considered to meet all of the stated objectives and therefore is the preferred option. In summary, this option:

* addresses the recommendations of the MTFs’ reviews, particularly the Grain MTF
* reduces costs to both government and industry and provides incentives for greater efficiencies
* encourages business operators to have confidence in the application of the regulation
* provides Government with confidence in the application of the regulation
* helps Australia to compete more effectively on world markets.

## IMPLEMENTATION AND REVIEW

DAFF currently administers the Orders and would continue to administer the revised Orders. DAFF proposed an implementation date as soon as possible after 1 July 2011 for the revised Orders.

DAFF is preparing policy and guideline material to assist businesses in understanding and complying with the revised Orders to help businesses to refocus and simplify their existing arrangements. Guidelines are being developed for the registration process, transitioning to the concept of businesses engaging their own AOs, the graduated sanctions approach and the process for approving new technologies for treating or inspecting exported goods. In addition, to support the delivery of these outcomes DAFF has conducted a review of existing training and instructional material. New training and instructional material has been developed to support new and ongoing authorised officers that will provide a nationally competency based training.

The cost of providing training for industry AOs will not be charged for the first twelve months of the new approach to assist industry through the transition period, when adjustment costs are likely to be highest.

An important facet of implementation of the revised Orders is enforcement and compliance. The revised Orders perpetuate the philosophy that DAFF, as the regulating authority, has the role of auditor and certifier rather than “policeman”. These systems encourage businesses to improve processes continually rather than the historic culture of doing the minimum to achieve compliance under an inspection-based system.

The proposed new Orders will promote the concept of AOs which will foster greater industry responsibility and create opportunities for a more compliant industry.

The proposed new Orders will be subject to review within five years of implementation. This review will be undertaken by DAFF.

# APPENDIX 1 SUMMARY OF AGREED AMENDMENTS

| ***EXPORT CONTROL (PLANTS AND PLANT PRODUCTS) ORDERS 2005*** |  |  |
| --- | --- | --- |
| **Ref** | **Clause No.** | **Title** | **Required outcome** | **Required action** | **Rationale** | **Other** |
| **Part 1** | **Preliminary** |
|  | **1** | Name of Orders [see Note 1] | N/a. | No change. (year only). |  |  |
| **2** | Commencement | N/a. | Commence orders on 1/07/2011. |  | May need to include transitional arrangements. |
| **3** | Application | Regulation not applied to goods that do not require phytosanitary or other official certification. | Include hay and straw that require a phytosanitary certificate or any other official certificate. Retain current prescribed grains.Change 3.1 (a) fresh fruits that require a phytosanitary certificate or any other official certificate (b) fresh vegetables that require a phytosanitary certificate or any other official certificate required by an importing country (c) dried fruits that require a phytosanitary certificate or any other official certificate (db) nursery stock and cut flowers that require a phytosanitary certificate or any other official certificate | Streamlines legislation. Reduces cost and impost to industry removes legislation doesn't require legislative controls. | Following consultation and agreement with industry repeal Hay and Straw Orders. |
| **4** | Interpretation | Improved clarity | Add wording " including varieties and synonyms" for all prescribed grains. Define "the Act". Add definitions for export. permit, loading permit etc. Approved inspector term will need replacing with AQIS Approved Officer and definition changed The definition for "Prepared in section 3 of the ECA is not entirely appropriate for grain and horticultural products. Definition for these products should be change to take in only places where phytosanitary treatments and/or inspection take place. | Update definitions to match new operational requirements |  |
| **Part 2** | **Prohibition on export of prescribed goods** |
|  | **5** | Prohibition | N/a. | No change. |  |  |
| **6** | Certain provisions of Prescribed Goods (General) Orders to apply | N/a. Enable exemptions in certain circumstances. | Add under Part 2 Order 6.1 "Parts 2, 4, 13, 14, 16 and 17 ……" | Deals with omission from previous drafting of Orders. Positive result for exporters. |  |

| **Part 3** | **Registered establishments** |
| --- | --- |
|  | 7 | Construction and other requirements for registered establishments | Reduce impost and costs. See also 8 below | Approved arrangements to incorporate construction requirements. 7.1 and 7.2 need to be combined into one. Food safety criteria for fresh and dried fruit and vegetables is managed by state authorities so the complex requirements for dried fruit should be removed (Schedule 3). | Removal of prescription. Removal of duplication with state authorities regarding food safety. |  |
|  | **8** | Preparation, etc in registered establishment | Improved clarity | Remove reference to "Preparation" and replace with "phytosanitary treatments and/or inspection takes place". | Preparation definition in the ECA is not entirely accurate for plants and plant products. Registration should only apply to places where phytosanitary treatment and inspection takes place and that could apply for all plants and plant products. Also need for provision for inspection to take place at a DAFF facility. |  |
| **Part 4** | **Product standards and trade descriptions** |
|  | **9** | Prescribed goods to comply with product standards | Prescribed goods to comply with standards.Contaminants must not be above specified levels. | Change (b) to read "Contaminant levels to be specified in an Instrument by the Secretary". | Removal of prescription. |  |
| **10** | Trade description to contain certain information | Improved clarity regarding 10.2 (d). | Need to be able to read trade description. Re-word to read "(d) the number allotted to the registered establishment in which inspection last occurred; and" |  | The term processing is not specific enough whereas at a registered inspection facility trace back is achievable. |
| **11** | Grade description for goods other than horticulture produce | N/a. | No change. |  |  |
| **12** | Product standards and trade descriptions for dried fruits | Removal of duplication and prescription. | Remove 12 Product standards for fried fruits authority. | Removal of prescription. | This is only a cross reference to another regulatory. Duplication not necessary. This item is not of phtyosanitary concern. |
|  | **13** | Packaging standards and trade descriptions for fresh fruits and fresh vegetables | For fresh fruit and vegetables need provision for updates in line with modern packaging methodology. | Change 13 to include dried fruits as well as fresh fruits and vegetables. Schedule 4 details can be moved into this section for improved clarity. Include "type of product" and "Any other information specified by an importing country for phytosanitary purposes. | Removal of prescription. Simplify format of legislation. More user friendly. Industry agreed to addition of type of produce and importing country requirements in 2009 and 2010 as this is routinely done in any case. | This is in line with outcomes of consultations with AQIS inspectorate and industry during 2009-10. If Schedule 4 is retained the detail will need to change to reflect modern packaging and labelling methodology standards - see later. |
| **14** | General requirements for packaging | N/a. | No change. |  |  |
| **14A** | Packaging requirements for mung beans | N/a. | No change. |  |  |
| **15** | Records of dates of packaging | N/a. | No change. |  |  |
| **16** | Fruit, vegetables and dried fruit not fit for human consumption | N/a. | No change. |  |  |
| **Part 5** | **Export clearance** |
| **Division I** | **Ship surveys - prescribed grain and prescribed goods for consumption** |
|  | **17** | Interpretation | N/a. | No change. |  |  |
| **18** | Arrangements for ship to be surveyed before loading | N/a. | No change. |  |  |
| **19** | Marine surveyor to be appointed by shipowner or agent and approved by exporter | N/a. | No change. |  |  |
|  | **20** | Acceptance of marine surveyor's certificate | N/a. | No change. |  |  |
| **21** | Obligations of marine surveyor | Obligations must include assurance that a ship is free from all contamination. | Add phytosanitary obligations. If surveys are done overseas, Orders will require extra-territorial provisions. |  |  |
| **Division 2** | **Loading permits** |
| **Subdivision A** | **Ships** |
|  | **22** | Loading permit to be obtained | Requires flexibility to change quantity. | Define loading permit. Make provision for quantity to be determined in an Instrument by the Secretary. | Provides flexibility to amend quantity in the future without amendment to the Orders. |  |
| **23** | Application for loading permit | Make application to the Secretary. | Delegate Secretary's powers to DAFF employees only. |  |  |
| **24** | Information required for loading permit |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **25** | Issue of loading permit |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **26** | Validity of loading permit |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **27** | Suspension or cancellation of loading permit if conditions change after inspection |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **28** | Surrender of loading permit |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |

| **Subdivision B** | **Container system units** |
| --- | --- |
|  | **29** | Permission to load to be obtained | Ensures that container system unit is clean and is free of contamination. | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. | Incorporate the current principles found in the empty dry box inspection procedures. |
|  | **30** | Application for permission to load |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **31** | Information required for permission to load |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **32** | Issue of permission to load |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **33** | Validity of permission to load |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **34** | Cancellation of permission to load if conditions change after inspection |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **35** | Surrender of permission to load |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **36** | Sealing and identification of empty container system units |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **37** | Loading of container system units in absence of approved inspector |  | Transfer to the "manual" or administrative document dealing with Loading Permits. | Removal of prescription. |  |
| **Division 3** | **Notice of intention and export permit** |
|  | **38** | Application | N/a. | Define "Notice of Intention" and "Export Permit". |  | Definition of an Import Permit may be necessary. |
| **39** | Giving of notice | Is three days noticed required for sub-paragraph 3(a)? | Combine sub-paragraphs 3(a) & 3(b). |  |  |
| **40** | Form of notice and accompanying information and declaration | Provide for Secretary to approve and "approved form". | Define "approved form". |  |  |
|  | **41** | Information in notice | Mandatory information is required to commence a phytosanitary transaction. | Recognise the IPPC principles for a model phytosanitary certificate. | Removal of prescription. |  |
| **42** | Exporter to be responsible for goods | Improved clarity regarding the application of this Division. | Remove the wording "other than nursery stock and cut flowers" and amend 3 Application | Previous wording has been confusing. |  |
| **43** | Certificates of analysis | N/a. | Define "approved method". |  |  |
| **44** | Inspection and certification | N/a. | No change. |  |  |
| **45** | Alteration of notice after certification | N/a. | No change. |  |  |
| **46** | Export permit | N/a. | Define "export permit". |  | A notice of intention is important as it serves as notification of a contractual requirement to purchase services. |
| **Part 6** | **Electronic communications** |
|  | **47** | Electronic communications | Is this required? | Delete. |  |  |
| **Part 7** | **Certification** |
|  | **48** | Certificate as to condition in respect of grain, fresh fruits, fresh vegetables or dried fruits | N/a. | No change. |  |  |
| **49** | Certificates and other information | Provide for Secretary to make inspection requirements. | Provide for Secretary to make inspection requirements. | Removal of prescription. |  |
| **50** | Goods to be re inspected | N/a. | No change. |  |  |

| **Part 8** | **Transport of certain horticulture produce** |
| --- | --- |
|  | **51** | Transport of dried fruits | Removal of redundant legislation. | Remove. | Phytosanitary requirements can be met through re-wording 52. |  |
|  | **52** | Transport of fresh fruits or fresh vegetables | Reflect to correspond with use of transfer documents for phytosanitary purposes. | Change to 52 " Transport or fresh fruits, dried fruits or fresh vegetables" Change to 52.1 "if fresh fruits, dried fruits or fresh vegetables………………….." and change to 52.2 "if fresh fruit, dried fruit or fresh vegetables are despatched to a central point where the official certification is to be issued, a transfer certificate an assessment notice for the goods may be issued by an authorised officer." | Simplification and specifies purpose of transfer certificates |  |
| **Part 9** | **Horticulture produce unsuitable for export** |
|  | **53** | Resubmission of rejected goods | Reflect correct terminology. | Current term "approved inspector" should be replaced with "Authorised Officer" | "Authorised Officer" is correct term and is defined. |  |
| **54** | Segregation of goods | N/a. | No change. |  |  |
| **Part 10** | **Approved arrangements**Refer comments. | Approved arrangements to be incorporated into a deed of arrangement.This section may need to re-titled and re-written to reflect new system of AQIS Approved officers AAO |
| **Division 1** | **Approval of arrangements** |
|  | **55** | Application for approval | AQIS Approved Inspectors AAO to replace Approved Arrangement | "arrangement" replaced with AQIS Approved Inspector "preparation to be replaced with "inspection of prescribed goods" | In accordance with Export Reform |  |
| **56** | Assessment of application and Secretary's decision | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **57** | When the Secretary may approve the arrangement | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **58** | Notice of decision not to approve an arrangement | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **59** | Approved arrangement may be subject to conditions | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |

| **Division 2** | **Variation of approved arrangement** |
| --- | --- |
|  | **60** | Variations to be recorded | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
|  | **61** | Variations requiring notification and approval | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **62** | Variations required by the Secretary | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **63** | When an arrangement includes a variation | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **Division 3** | **Suspension and revocation** |
|  | **64** | Grounds for suspension or revocation | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **65** | Notice of suspension or revocation | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **66** | Revocation of suspended arrangement | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **67** | Termination | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **68** | Secretary may require action to be taken | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **69** | Action in relation to prescribed goods | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **70** | When an approved arrangement ceases to have effect | Updated to reflect new system. | Change to match new system | In accordance with Export Reform |  |
| **Division 4** | **Audit** |
|  | **71** | Secretary may require audits | Should this include the "manual"? Details in Administrative Procedures | Wording to change | In accordance with Export Reform |  |
| **Part 11** | **Repeal and transitional** |
|  | **72** | Repeal of orders | Provide for hay and straw. | Repeal *Export Control (Hay and Straw Orders) 2005.* |  | Need to address current requirement for ARGT regulation as it is not a phytosanitary issue. |
| **73** | Transitional | Provide for transitional arrangements. | Include appropriate transitional arrangements. | In accordance with Export Reform | Useful to prescribe a time frame for transitional arrangements? |

| **Schedules** |  |  | Make provision for rodents being of concern but detail in respect to rodents and droppings be included in a manual/standard. |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Schedule 1** |  | **Marine surveyors' qualifications** | Less prescription | Replace with a deed by the Secretary. | Removal of prescription and provides more flexibility for future amendments | Need to review qualifications as some marine surveyors may never qualify. |
| **Schedule 2** |  | **Requirements for registered establishments for prescribed goods other than dried fruits** | Less prescription | Remove schedule to a "manual" or administrative documents. | Removal of prescription and provides more flexibility for future amendments | Based on risk. |
|  | **Part 1** | **General** |  |  |  | Based on risk. |
| **Part 2** | **Bulk commodity terminals** |  |  |  | Based on risk. |
| **Part 3** | **Export packing facilities for goods other than fresh fruits or fresh vegetables** |  |  |  | Based on risk. |
| **Part 4** | **Small export packing facilities** |  |  |  | Based on risk. |
| **Part 5** | **Structural, operational and hygiene requirements for establishments preparing fresh fruits or vegetables** |  |  |  | Based on risk. |
| **Division 1** | **Structural requirements** |  |  |  | Based on risk. |
| **Division 2** | **Operational and hygiene requirements** |  |  |  | Based on risk. |
| **Schedule 3** |  | **Requirements for registered establishments for dried fruits** | Less prescription | Remove schedule to a "manual". Align with fresh fruits and vegetables by removing food safety issues that are already controlled by state authorities. | Removal of prescription and provides more flexibility for future amendments.Removes duplication with state authorities. |  |
|  | **Part 1** | **Construction requirements** |
| **Part 2** | **Operation requirements** |
| **Schedule 3A** |  | **Requirements for registered establishments for mung beans** | Less prescription | Remove schedule to a "manual" or administrative documents. | Removal of prescription and provides more flexibility for future amendments | Need to consult with mung bean industry and review currency of requirements |
| **Schedule 4** |  | **Packaging standards and trade descriptions for fresh fruits and fresh vegetables** | Simplify legislation | Move to Part 4 Order 13. | Condenses legislation. |  |
|  | **Part 1** | **Packaging materials** | Simplify legislation | Move to Part 4 Order 13. | Condenses legislation. |  |
| **Part 2** | **Complete trade description to be applied** | Update to match modern packaging | Remove (a) Change (b) to read "must be in prominent, indelible and legible characters. Remove ( c ). | Less prescription. | In accordance with modern packaging and labelling and consultation with industry in 2009 and 2010. |
| **Schedule 5** |  | **Inspection and treatment requirements for ships and container system units** | Less prescription | Remove schedule to a "manual" or administrative documents.Need to provide "shipping bin concept" and make allowance for future technologiesMake provision in the Orders that all empty vessels, containers etc are free of all forms of Trogoderma. | Removal of prescription and provides more flexibility for future amendments.Removes duplication with state authorities. | Need to review currency of requirements. |
|  | **Part 1** | **Ship inspection** | Less prescription |  |  |  |
| **Part 2** | **Container system unit inspection** | Less prescription |  |  |  |
| **Schedule 6** |  | **Inspection of prescribed grain and certain other prescribed goods for which phytosanitary certificate required** | Less prescription | Remove schedule to a "manual" or administrative documents.Retain 'nil tolerance for insects' with specific provisions in the 'manual'.Address MTF recommendations in respect to removal of non-phyto issues i.e. crotalaria, datura and claviceps. | Removal of prescription and provides more flexibility for future amendments | Need to review currency of requirements |
|  | **Part 1** | **Preliminary** |  |  |  |  |
| **Part 2** | **Relevant goods in bulk** |  |  |  |  |
| **Part 3** | **Relevant goods in bulk being loaded into container system units** |  |  |  |  |
| **Part 4** | **Bagged relevant goods being loaded into ships' holds** |  |  |  |  |
| **Part 5** | **Bagged relevant goods being loaded into container system units** |  |  |  |  |
| **Part 6** | **Relevant goods inspected for phytosanitary certification** |  |  |  |  |
|  | **Part 7** | **Treatment of rejected relevant goods** |  |  |  |  |
| **Schedule 6A** |  | **Inspection procedures for mung beans** | Less prescription | Remove schedule to a "manual". Align with fresh fruits and vegetables by removing food safety issues that are already controlled by state authorities. | Removal of prescription and provides more flexibility for future amendments | Need to consult with mung bean industry and review currency of requirements |
|  | **Part 1** | **General** |  |  |  |  |
| **Part 2** | **Bagged mung beans** |  |  |  |  |
| **Part 3** | **Mung beans in bulk** |  |  |  |  |
| **Division 1** | **Mung beans in bulk being loaded into ships' holds** |  |  |  |  |
| **Division 2** | **Mung beans in bulk being loaded into container system units** |  |  |  |  |
| **Part 4** | **Inspection of mung beans for phytosanitary certification** |  |  |  |  |
| **Part 5** | **Treatment or cleaning of mung beans and their re-presentation** |  |  |  |  |
| **Schedule 7** |  | **Requirements relating to issuing of phytosanitary certificate** | Less prescription | Remove schedule to a "manual". Align with fresh fruits and vegetables by removing food safety issues that are already controlled by state authorities. | Removal of prescription and provides more flexibility for future amendments | Need to review currency of requirements |

# APPENDIX 2 JOINT GRAIN & SEED INDUSTRY / AUSTRALIAN QUARANTINE INSPECTION SERVICE MINISTERIAL TASKFORCE – EXPORT CERTIFICATION REFORMS ISSUES PAPER - SUMMARY OF INDUSTRY RESPONSES JUNE 2010

The following is a summary of the major issues and comments received from industry in submissions to the Joint Grain and Seed Industry / Australian Quarantine Inspection Service Ministerial Taskforce (Taskforce) following release of the “Issues Paper” in April 2010. A range of issues were raised by industry and these have been summarised as follows for industry information. Each of the points raised by industry will be used by the Taskforce to action the reform agenda. There is no guarantee each suggestion will be adopted by the taskforce however due consideration will be given to all options raised by industry.

1. **Legislation & Inspection Models**
	* Industry requires a flexible inspection system coupled with legislation that enables industry to develop inspection methods based on their own export operations. For example, investigate the use of ship bin inspection and pre-shipment inspection for bulk exports as per containers.
	* AQIS approve the inspection arrangement on the basis of a recommendation of a third party & industry adoption of approved systems such as a QA scheme. Remove the duplication of inspection activities that occurs by AQIS and industry and utilise existing industry sampling and inspection processes.
	* Review the potential for use of on-board fumigations where low levels of insects are detected.
	* Consider options for vessel inspections at anchorage and for removal of the requirement for multiple inspectors on the vessel prior to approval for loading.
	* Simplify the inspection arrangements of small parcel and bag exports.
	* There is a lack of recognition of inspection systems across the supply chain by importing country authorities.
2. **Market Access and System Interfaces and Capability**
	* Review the formation of an over-arching market access advisory group to deal with all market access issues, prioritise and action market access issues.
	* There is a lack of local capability and data availability to support the status of pest and diseases in grain. Additionally, investigate the development of an Australia-wide database of pest and diseases of quarantine concern and how this data can be collected from the various Government and commercial players in the industry.
	* Update the PHYTO database more regularly as it is not always accurate. Develop a mechanism to ensure issues of importance are rapidly advised to industry.
	* If Government to Government discussions on market access are occurring, industry needs to be involved to provide effective feedback and to have input into the outcomes.
	* Government to more proactively engage with other Governments to clarify import requirements.
	* A general shortage of AQIS inspectors delays authenticating Phytosanitary Certificates and leads to costs for industry and potential loss of markets where sample inspection is involved.
	* The EXDOC system is not flexible and adds costs to industry every time a change is required.
	* Government should more actively encourage e-certification and recognition of industry electronic systems.
3. **Financial Impacts of Inspection Arrangements**
	* Investigate a differential charging b/w seed and grain exports with potential for a sliding scale based on the size of consignments.
	* Lower charges for sample exports and for provision of Phytosanitary Certificates.
	* Benchmark AQIS charges against world's best practice.
	* Investigate the potential for industry to employ full-time AQIS staff within a business.
	* Reduce the administrative burden for AQIS inspectors.
4. **Communication Pathways**
	* Require greater transparency of the AQIS decision making process and work practices. This would be assisted by updating AQIS work practices and their training material.
	* Industry Advice Notices should be more frequently provided to industry.
	* There are different interpretations applied by AQIS of declarations and statements on Import Permits. The method of obtaining and updating import permits requires review as they are often difficult to obtain.
	* Industry receives different advice from AQIS depending on the officer and the issue. Creating more consistent decisions across inspectors will be assisted by development of a precedents database and greater training for AQIS and industry.
	* The high turnover of AQIS staff leads to relatively inexperienced staff and contract labour, causing industry issues with different interpretations.

# APPENDIX 3A SUMMARY OF RESPONSES TO GRAIN AND SEEDS SERVICE DELIVERY MODEL

|  |  |  |
| --- | --- | --- |
|  | Aus-Slab International Pty Ltd | Log and container inspection* AAIs
 |
|  | Australian Agricultural Crop Technologies P/L | Lack of industry consultationTime frames too shortContainerisationBagged productShould form a more substantial part of the recommended legislative processCA arrangementsTraining issuesPrescribed grains & Prescribed goods products - can Standard required be defined by end use?Lack of consistencyIssues about push for accredited premisesCost to industry –registration, audits, training, additional workDefine role of contractors in the new modelClarity around how schedules to be dealt withLack of consultation – issues affecting Containerized Trade not addressedLegislation does not address difference between bulk and containerised tradeIssues about levels of classificationAudit frequencySupports AAIsEmpty vessel inspection hasn’t covered containerised tradeFair AQIS fees and ample lead-in timeWill training currently happening be redundant?AGICC representationWill Industry Approved Inspector be able to sign off on Phytosanitary certificate?Timing and location of trainingConsultation and timingBack up person trained by AAIQuestions need for level 3 auditsPrefer no change to systemFunding of AQIS day to day operationsConsultation not adequate.AQIS inspect vessels at anchorageConsultation not adequate.New charging guidelines |
|  | GrainCorp Operations Ltd | AQIS responsibilitiesNil tolerance of insectsOn board fumigations* Adequate resources
 |
|  | Forestry Plantations Queensland | Log – inspection process flexible to allow for difference between logs food grade grainAudit frequency* Logs – phytosanitary certificate requirements
 |
|  | Kelso Logistic Pty Ltd | AAIs – flexibility rather than cost savingAAIs – on-going support (logs)AAIs – multi-company arrangements* MBr usage
 |
|  | Blue Ribbon Seed and Pulse Exporters | Mungbeans –concern about outcome of removing sections from the legislation* Mungbean Code of Hygienic Practice
 |
|  | Victoria Freight and Logistics Council | * Review requirement for food quality containers
 |
|  | Australian Bulk Alliance Pty Ltd | AAIs – who appoints to avoid duplicationFurther info requested on appt of AAIsAudit frequency |
|  | Cargill Australia Limited | * Ships’ holds inspections
 |
|  | Fremantle Ports | * Ships’ holds inspections
 |
|  | Seedmark | AAIs – would need clear cost benefit to offset the extra work needed* National standards
 |
|  | South Australian Freight Council | AAIs* Ships’ holds inspections
 |
|  | TUS Holdings Pty Ltd | * -No comment
 |
|  | Dunavant Australia (LouisDreyfus Commodities) | * Cotton seed
 |
|  | Mitavite (division of Inghams Enterprises Pty Limited) | * AAIs
 |
| 1. /
 | Tarac Technologies Pty Ltd | AAIs - Non Prescribed goodsCan an AAI sign a phyto?Requirement of phytos* Fumigation
 |
|  | Victorian Farmers Federation | AAIs - audit, surveillance and monitoringMore info about consultation process/responsibilities for removal of detail from legislation requiredStandards – more info required on proposed changes/process/accountabilityCost recovery – costs come back to growers?No change to nil toleranceConcerns with on-board fumigation* Inspection model should be considered separately to Standards and legislation. Formal consultation process needed.
 |
|  | Shipping Australia Ltd | DefinitionsAAIs – conflict of interest re approving for AQIS and exporterEmpty containers – no change?Ships’ holds inspectionsAAIs – can they inspect empty containers?* AAIs - liability
 |
|  | Australian Institute of Marine Surveyors | Short time frames for consultationIncrease the risk of contamination of export grainsAustralia’s reputation for clean grain exports reduced - evidenced by increasing demand for preventative surveys of ships before loadingAAIs – need to meet AQIS OH&SAAIs – liability?Single person inspections - probably lead to ‘surveyor shopping’Ships will try to be classified as level 1 – disputes will result in berths being occupied.Overseas-based marine surveyors – training/verificationCost to industryConsultation processShips’ holds inspectionsShip owners’ insurance – a critical operation that could result in a large claim incident should not be controlled by one, unaided personAIMS – should be represented on decision making forum |
|  | Viterra | AAIs- training- verification- registration- penalties- transfer of liability ‘shipping-bin’ – how would it work?Ships’ holds inspectionsAudit systemsRevoking AAIsOH&SHygiene requirements for premisesNil tolerance/wihin tolerances for noxious contaminantsIndustry consultation in developing standardsOn-board fumigation – risk of poorer standardsNRS – collection of samplesAGICC’s role important – may need increased membershipStrongly supports flexible risk‐based approach and retention of prescribed grainsRetention of AQIS capacity for those who don’t want AAIsWho nominates an AAI?24/7 vessel loadingAAIs -compliance burden (deed, accreditation, training, compliance audits and reporting) should include a cost benefit analysisCommitment to provide lead time, financial and human resources to facilitate proposed alternative inspection arrangementsTransition plans |
|  | CBH Group | AQIS must maintainAAIs expanded roleAAIs and levels of risk for which they can be engagedSupport National Standard developmentSupport three levels of AQIS intervention – clarification of risk profiles* Support alternative service delivery model - clarification of risk profiles.
 |
|  | Shashi Sharma, Department of Agriculture and Food, WA | Too short time frame for commentPrescribed grain definition – mung beans/chia/dried field peasAAIs – issuing phytos?Clarification subordinate legislation - schedule 6 AAIs – clarification of revoke approvalEmployer support of AAIConsultation in Standard developmentAdditional supporting informationEditorialCrushed/rolled grainsClarification re commodities other than prescribed grains in Section 4Clarification of riskSharing of data |
|  | Aus-Slab International Pty Ltd | Log and container inspection* AAIs
 |
|  | Australian Agricultural Crop Technologies P/L | Lack of industry consultationTime frames too shortContainerisationBagged productShould form a more substantial part of the recommended legislative processCA arrangementsTraining issuesPrescribed grains & Prescribed goods products - can Standard required be defined by end use?Lack of consistencyIssues about push for accredited premisesCost to industry –registration, audits, training, additional workDefine role of contractors in the new modelClarity around how schedules to be dealt withLack of consultation – issues affecting Containerized Trade not addressedLegislation does not address difference between bulk and containerised tradeIssues about levels of classificationAudit frequencySupports AAIsEmpty vessel inspection hasn’t covered containerised tradeFair AQIS fees and ample lead-in timeWill training currently happening be redundant?AGICC representationWill Industry Approved Inspector be able to sign off on Phytosanitary certificate?Timing and location of trainingConsultation and timingBack up person trained by AAIQuestions need for level 3 auditsPrefer no change to systemFunding of AQIS day to day operationsConsultation not adequate.AQIS inspect vessels at anchorageConsultation not adequate.New charging guidelines |
|  | GrainCorp Operations Ltd | AQIS responsibilitiesNil tolerance of insectsOn board fumigations* Adequate resources
 |

# APPENDIX 3B SUMMARY OF RESPONSES TO HORTICULTURE SERVICE DELIVERY MODEL

|  |  |  |
| --- | --- | --- |
| **No.** | **Stakeholder** | **Issues** |
|  | Seedworld Australia | Cost to take up AAO system |
|  | Lochert Bros.  | Concern for required Deed of ObligationProblem protocol markets (Japan)Resources for AAOs (computers) |
|  | Truffles Australia | Training info  |
|  | Citrus Australia | AQIS IT Systems and cost of EXDOC |
|  | Down Under Native Orchids | Small exporters, increasing AQIS costs and offsetting big exporters.Nature of overseas rejections and using this data to potentially suspend AAOs |
|  | Cycad Enterprises | AQIS Phyto database to be currentAAOs to conduct inspections at non-registered establishmentsRecognition of qualifications for AAOs |
|  | Austparagus | IT System Development |
|  | Serving the Road Transport Industry | Short timeframe for industry feedback |
|  | Sumar | Request for more time |
|  | South Australian Freight Council | Supports new service delivery model |
|  | Citrus Australia | Supports new service delivery model Problem protocol markets for citrus |
|  | Antico | More detail on policy principles requiredAQIS service to remain an optionCost estimates and SOPs not yet providedNeed for integrated IT systems |
|  | AHEA | Apparent similarities with current AAsDetails of current model requiredCost modelling requiredLiability of AAO Low uptake of AAOsAQIS budgetCost of an AAOEmployment limitations of AAOs |
|  | Hannay Douglas | Apparent similarities with current AAsSurvey likely industry uptakeCost modelling requiredO/S interception reports and verificationContinuation of AQIS services |
|  | Cedarvale Orchids | Use of AAO for domestic interstate requirements |

# Grain Export Headers 300

# APPENDIX 4 GRAIN EXPORTS QUESTIONS AND ANSWERS –OCTOBER 2010

**Question: What is the AQIS-Grains Industry Consultative Committee (AGICC) and what is its role?**

**Answer:** The AQIS-Grains Industry Consultative Committee (AGICC) is the principal advisory forum for AQIS to consult with the grains and related industries on export certification, export market access, quarantine and other relevant issues. The AQIS Plant Export Program only introduces major policy or operational changes after AGICC has been consulted. AGICC recognises that final responsibility for decision-making on phytosanitary matters rests with AQIS. The members of the Grains MTF are also members of AGICC.

**Question: Will AQIS continue to provide sampling, inspection and regulatory activities?**

**Answer:** Yes. AQIS will continue to provide sampling, inspection and regulatory services to exporters who do not wish to use AQIS Approved Inspectors (AAIs). This will be conducted on a full cost-recovery basis. Export facilities wishing to shift to using AAIs may continue to use AQIS inspectors during the transition period.

**Question: What is an AQIS Approved Inspector (AAI)?**

**Answer:** Under the new proposed service delivery model, AQIS Approved Inspectors are either an authorised officer (current AQIS inspectors) or a suitably trained person approved to undertake inspection and certification activities under an approved arrangement. AAIs will be directly responsible to AQIS for any sampling, inspection and testing tasks. This will involve training including a formal accreditation process and verification to ensure ongoing competency.

**Question: If I choose to take the AAI option, do I have a deadline for when I must have an AAI in place?**

**Answer:** There will be no official deadline. Introduction of AAIs will be a gradual process largely dependent on business readiness and requirements. Once the details are fully developed, AQIS will work with establishments to determine individual plans for introducing AAIs. The MTF will keep you up-to-date on the progress of these reforms.

**Question: How will I find out about the training of staff, or will I need to undertake training? When will this information be available?**

**Answer:** Once the service delivery options are approved by the Grain MTF, AQIS will coordinate a training package for industry and AQIS staff. The Department will advise you in writing when this will take place, costs involved, what it will cover and logistics.

**Question: When will these recommendations take effect?**

**Answer:** Government funding for the reform process ends on 30 June 2011. Once the Grain MTF receives general consensus on the recommendations, work will begin on the legislative amendment process. This may not be completed until after 30 June 2011. However, any reforms that do not require a legislative amendment, such as revised national standards, can be implemented immediately.

**Question: I operate a business in a remote location. How will I get access to an AAI at a reasonable cost?**

**Answer:** A good option for you may be to have a person within your business trained as an AAI. The scope of work your AAI could be trained to undertake includes: drawing samples, inspecting goods and/or providing inspection reports to AQIS. Having someone in your business undertaking these tasks will benefit you. You will have the flexibility to load containers according to your operational timeframes and demands. The Grain MTF will undertake a further project to analyse the cost of this option, including AQIS charges to ensure an equitable fee schedule.

**Question: I operate an approved arrangement and get audited regularly by AQIS. I have a good compliance record, yet I see there is a proposal to increase audit frequency. Why is this so? And how does it benefit me?**

**Answer:** Under the current proposal, level three facilities will require increased audit and verification because hygiene and pest control in registered premises underpin Australia’s sampling and inspection methodology. History has shown that where these standards have not been met, Australia’s reputation of prescribed grains has been put at greatest risk.

It is important to note that the proposed audit frequency for level three can be reduced through a record of good performance.

There may also be opportunities for your business to reduce duplication of inspection effort. For example, if you currently use third party commercial inspectors for contractual reasons, the proposal to expand and strengthen the role of AAIs may remove this need.

**Question: I am quite happy with how the current system is. Why change it?**

**Answer:** You can continue to use the current system (option one in the SDM paper). See Section 4.1.2 of the paper for more detail.

The proposed system (option two in the service delivery paper) which expands the role of AAIs will give your business more flexibility and control over timing of inspections with less dependence on end-point goods inspection. It will also provide industry and AQIS with flexibility, so that future reforms and efficiencies will be able to be more readily adopted because we will have a modern legislative framework.

**Question: If I now pay directly for an AAI, who will fund the day-to-day operations of the AQIS grain export program?**

**Answer:**  All exporters will continue to pay for services such as AQIS verification, audit activities, tonnage fees and certificates. All activities performed by the AQIS grain export program will be fully cost recovered in industry fees and charges.

**Question: I outlined some specific concerns with the operating systems; one in particular in the area of bagged goods sampling. My concerns have not been addressed by this proposal. What is happening with those issues?**

**Answer:** All issues raised in responses to the three consultation rounds have been considered by the Grain MTF. Many of the solutions to issues raised will be addressed if the proposals in this paper are endorsed by industry. The national standards for issues including shipping bin and in-line sampling procedures, fumigation of vessels and nil-tolerance for live insects will then be considered.

**Question: Why can’t AQIS inspect vessels at anchorage?**

**Answer:**  The Grain MTF agrees that training should be developed to allow more flexibility in the inspection of vessels. These inspection functions may be performed by AAIs. The approval of inspectors would be similar to the model developed for the Australian fertiliser industry, where vessel inspections are conducted by approved marine surveyors with training in Australian quarantine requirements.

**Question: Where do I get more information?**

**Answer:** More information about the Export Certification Reform Package (ECRP) can be found at [www.daff.gov.au/ecrp](http://www.daff.gov.au/ecrp). Grains-specific information and reform updates will be posted at [www.daff.gov.au/ecrp-grain](http://www.daff.gov.au/ecrp-grain). New questions and answers may arise as the reform process progresses. These will be posted on this website.

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# APPENDIX 5 HORTICULTURE EXPORTS QUESTIONS AND ANSWERS – DECEMBER 2010

**Question 1: Will AQIS continue to provide inspection and regulatory services?**

**Answer:** Yes. AQIS will continue to provide inspection and regulatory services to exporters who do not wish to use AQIS Approved Officers (AAOs). The cost for this will be met by the exporter. Export facilities wishing to shift to using AAOs may continue to use AQIS inspectors when required.

**Question 2: What is an AQIS Approved Officer (AAO)?**

**Answer:** Under the proposed service delivery model, an AQIS Approved Officer is a suitably trained, competent person approved to undertake export regulatory functions in accordance with the relevant export legislation. An AAO will be directly responsible to AQIS for any export certification activities. Becoming an AAO will involve training, a formal accreditation process and verification to ensure ongoing competency.

**Question 3: If I choose to take the AAO option, do I have a deadline for when I must have an AAO in place?**

**Answer:** There will be no deadline. Introduction of AAOs will be a gradual process largely dependent on business readiness and requirements. AQIS will work with establishments to determine individual plans for introducing AAOs. The MTF will keep you up-to-date on the progress of these reforms.

**Question 4: How will I find out about training?**

**Answer:** Once the service delivery options are finalised by the Horticulture MTF, AQIS will coordinate a training package for industry and AQIS staff. The Department will advise you in writing when this will take place, costs involved, what it will cover and logistics.

**Question 5: When will these recommendations take effect?**

**Answer:** Government funding for the reform process ends on 30 June 2011. Once the Horticulture MTF receives general consensus on the recommendations, work will begin on the legislative amendment process. This may not be completed until after 30 June 2011.

**Question 6: I operate a business in a remote location. How will I get access to an AAO at a reasonable cost?**

**Answer:** A good option for you may be to have a person within your business trained as an AAO. The scope of work your AAO could be trained to undertake includes: registration

processes, inspecting goods and/or undertaking required audit activities. Having someone in your business undertaking these tasks will benefit your business. You will have the flexibility to load containers according to your operational timeframes and demands.

**Question 7: I am happy with how the current system is. Why change it?**

**Answer:** You can continue to use the current system. See Section four of the service delivery paper for more detail.The proposed system (option two in the service delivery paper) which expands the role of AAOs will give your business more flexibility and control over timing of inspections with less dependence on end-point inspections. It will also provide industry and AQIS with flexibility, so that future reforms and efficiencies will be able to be more readily adopted because we will have a modern legislative framework.

**Question 8: If I now pay directly for an AAO, who will fund the day-to-day operations of the AQIS horticulture exports program?**

**Answer:** All exporters will continue to pay for services such as AQIS verification, and Government certificates. The cost for all activities performed by the AQIS horticulture exports program will met by industry fees and charges.

**Question 9: Where do I get more information?**

**Answer:** More information about the Export Certification Reform Package (ECRP) can be found at [www.daff.gov.au/ecrp](http://www.daff.gov.au/ecrp). Horticulture-specific information and reform updates will be posted at [www.daff.gov.au/ecrp-horticulture](http://www.daff.gov.au/ecrp-horticulture). New questions and answers may arise as the reform process progresses. These will be posted on the website.

1. Frawley P, Makin L, Nieper R, Wilson B (2000) Export Assurance National Competition Policy Review of the *Export Control Act 1982*, Canberra [↑](#footnote-ref-1)
2. DAFF 2011. *Australian Food Statistics 2009-10*. [↑](#footnote-ref-2)
3. ABARES 2010. *Australian commodity statistics 2010*. [↑](#footnote-ref-3)
4. [ABS](http://ABS) 2007 *Value of Agricultural Commodities Produced, Australia, 2009-10 (7503.0)*  [↑](#footnote-ref-4)
5. Grain MTF meeting, 19 April 2011 - agenda paper no. 4vii [↑](#footnote-ref-5)
6. Horticulture MTF proposed fee model [↑](#footnote-ref-6)