



Australian Government
Department of Agriculture

Mr Gerry McNally
Committee Secretary
Senate Standing Committee on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr McNally

The Department of Agriculture welcomes the opportunity to provide a submission on the provisions of the Export Control Bills Package, that is, the:

- Export Control Bill 2019
- Export Control (Consequential Amendments and Transitional Provisions) Bill 2019
- Export Charges (Imposition - General) Amendment Bill 2019
- Export Charges (Imposition - Excise) Amendment Bill 2019
- Export Charges (Imposition - Customs) Amendment Bill 2019

Please find the department's submission attached to this correspondence.

I trust that the information will assist the Committee in the course of the inquiry.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'M. Thompson', with a long horizontal flourish extending to the right.

Malcolm Thompson

18 December 2019

Senate Rural and Regional Affairs and Transport Legislation Committee

Export Control Bill 2019 and related Bills

SUBMISSION BY THE DEPARTMENT OF AGRICULTURE

On 5 December 2019, the Senate referred the Export Control Bills Package (the Bills Package) to the Senate Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 7 February 2020.

This submission provides further information about the Bills Package to assist the Committee with its inquiry.

Context

Agricultural exports are an economic powerhouse for our nation, worth around \$49 billion in 2018-19. Agricultural export legislation underpins Australia's reputation as a supplier of safe and reliable food and other products. It gives confidence to our trading partners that Australian exports meet their requirements.

The Bills Package is designed to streamline and simplify legislation governing agricultural exports. The current legislative framework incorporates over 20 supporting Acts and 40 supporting legislative instruments. Many of these legislative instruments are due to sunset on 1 April 2021.

The Bills Package is based on the Export Control Bill 2017 which was introduced into Parliament in December 2017 and lapsed when Parliament was prorogued in April 2019. The Export Control Bill 2017 was developed from the findings of the 2015 Agricultural Export Regulation Review (the review). The Bills Package similarly reflects the findings of the review.

The review analysed the existing legislation and found that the existing legislative framework has served our exporters well, and satisfies the needs of our trading partners. However, there is room for improvement, particularly to ensure our exporters are well placed to take advantage of the opportunities provided by free trade agreements and growth in international trade.

The Bills Package comprises the:

- Export Control Bill 2019,
- Export Control (Consequential Amendments and Transitional Provisions) Bill 2019,
- Export Charges (Imposition – Customs) Amendment Bill 2019,
- Export Charges (Imposition – Excise) Amendment Bill 2019, and
- Export Charges (Imposition – General) Amendment Bill 2019.

Overview of the Bills

The Export Control Bill 2019 (the 2019 Bill) is the centrepiece of the Bills Package and the new export legislative framework. It will replace the *Export Control Act 1982* and associated legislative instruments. The 2019 Bill also includes provisions that underpin agricultural exports that are set out in other acts, including the *Australian Meat and Live-stock Industry Act 1997*.

The new export legislative framework provides a more contemporary, flexible and efficient approach to the regulation of agricultural exports. This will see our exporters better placed to take advantage of commercial opportunities in global markets. The new framework removes and apparent inconsistencies in the current framework.

The new framework enables the government to be more responsive to changes in importing country requirements. The 2019 Bill is designed to support, and give effect to, Australia's rights and obligations under relevant international agreements, including trade-related agreements.

The 2019 Bill includes provisions for more effective sharing of information to improve the way the department conducts its business. It supports innovation by including a provision concerning approval of alternate regulatory arrangements. The 2019 Bill also encourages those involved in new and emerging industries to export by enabling the government to provide export certificates for a broader range of goods.

The 2019 Bill is deliberately commodity neutral. It provides information about regulatory provisions that may be applied to various export operations and, regardless of the commodity, the penalties and sanctions that apply if there are instances of non-compliance with these provisions. The 2019 Bill will be supported by legislative instruments in the form of commodity specific rules that describe which regulatory provisions apply to each commodity, and the operational detail of how they will apply.

The Export Control (Consequential Amendments and Transitional Provisions) Bill 2019 (C&T Bill) outlines how the transition from the existing to the new export legislative framework will be managed. This will ensure that exports are appropriately regulated during the transition process, and that access to international trading markets will be maintained. The government will aim to transition all regulatory provisions under the current framework that are able to be transitioned, and to provide as much time as possible for exporters to make any changes needed, such as updating legislative references in documentation that will transition.

The three export charges bills will provide the legal authority for the government to continue to impose charges that appropriately reflect the cost of administering the export control system, both now and into the future. The Bills Package will continue to provide that the Minister for Agriculture must be satisfied that the amount charged will not be more than the likely costs in connection with the export of goods.

The scope of the project to develop the new export legislative framework does not include work on export cost recovery arrangements and actual fees and charges themselves.

Implications of new legislative framework for industries

The legislation will not change the current level of regulatory oversight. The 2019 Bill draws regulatory provisions from existing acts thereby making them available to support the export of all agriculture commodities, if desired in the future. For example, current export licencing provisions that apply to meat and livestock exporters under the *Australian Meat and Live-stock Industry Act 1997* are provided for in the 2019 Bill. These provisions appear in the current legislative framework and are well recognised by exporters and other stakeholders. Inclusion of these provisions in the 2019 Bill enables them to be adopted, as required, to the export of any commodity covered by the framework.

The 2019 Bill includes expanded compliance and enforcement powers, triggering the *Regulatory Powers (Standard Provisions) Act 2014*. This will ensure that officers who perform functions or exercise powers under the Act are able to effectively monitor compliance and investigate wrongdoing under the 2019 Bill in a way that is consistent with other Commonwealth regulatory agencies.

The expanded compliance and enforcement regime strengthens the department's regulatory efforts. The department will be able to respond in a more appropriate and targeted manner to instances of non-compliance, applying sanctions and seeking penalties that are commensurate with the offence. A more targeted sanctions regime gives all participants greater assurance about the integrity of the system. It deters the small minority who seek to disregard their responsibilities under legislation, thereby assisting in protecting our valuable export markets.

Some of the maximum penalties that a court may impose have been increased in the 2019 Bill, compared to the 2017 Bill. These increases reflect the government's commitment to maintaining access to our valuable overseas markets, and ensuring punishments reflect the seriousness of offences. For example, an exporter who contravenes an export licence condition may face up to 10 years imprisonment or 2,000 penalty units, or both, an increase from 5 years imprisonment or 300 penalty units. A corporation holding an export licence who is found to have not complied with its licence conditions may face a financial penalty of at least 20,000 penalty units.

The introduction of consideration periods for applications associated with a range of regulatory provisions under the new framework will provide more certainty for exporters in their business endeavours.

The 'fit and proper person' test has been streamlined. For example, meat and livestock exporters will not need to undergo both a person of integrity test, as currently required by the *Australian Meat and Live-stock Industry Act 1997*, and a separate, but very similar, fit and proper person test, as required by the *Export Control Act 1982*.

Provisions for third party authorised officers are clearer under the 2019 Bill, providing an incentive for exporters to consider the option of engaging non-government authorised officers to undertake regulatory activities, where agreed by trading partners.

The department is working with stakeholders to minimise the potential impacts of transition to the new legislation, including impacts associated with any changes in arrangements, such as those that may be considered for Approved Arrangements. This is a continuing focus for the department.

Savings associated with the framework

The Regulatory Impact Statement (RIS) estimates that the new export legislative framework will deliver reductions in the regulatory burden for businesses in the order of \$388,000 per year in total. The savings are expected to be realised through streamlining of the 'fit and proper person' test and processes to appoint third party authorised officers. While the RIS identifies relatively small regulatory savings, the new framework provides opportunities for businesses along the export supply chain to be able to achieve further savings. For example, by consolidating and streamlining the legislative requirements, the new framework makes it easier for exporters to understand and comply with their regulatory obligations.

The 2019 Bill also expands the definition of 'goods' and enables the department to regulate a broader range of goods for export, if required for market access. This will ensure importing countries can be satisfied that their requirements are met.

So, while the direct quantifiable regulatory savings are modest, it includes provisions that:

- enable businesses to improve their efficiency;
- encourage the uptake of innovation by businesses; and
- support exporters involved with new and emerging industries to enter the global market.

It is therefore expected that businesses will benefit in a range of ways from the new legislation, particularly as the commodity specific rules are developed and exporters are able to identify further opportunities for efficiencies.

Transitional arrangements for managing the transition from the existing to the new legislative framework have been carefully considered to minimise any costs for exporters and others along the supply chain. Regulatory provisions will be transitioned, where possible, so that, for example, an export registered establishment under the existing framework will be considered an export registered establishment under the new framework. Timeframes for any changes that are required will be consulted with the affected sectors to minimise any possible impacts.

Consultation on the framework

Extensive stakeholder consultation has been a key feature of the development of the new export legislative framework. Consultation began with the review of the current export legislative framework in 2015 and has been ongoing since that time.

The department has engaged with supply chain participants and other stakeholders through a range of channels. The department has used its website extensively to provide information and draft legislative documents, and to seek feedback. Consultation has also occurred directly with peak industry bodies, through established departmental-industry consultative committees, via email and at face-to-face workshops and seminars.

Consultation targeted Australian agricultural industries, state and territory governments, trading partners, other Commonwealth agencies, the general public and other stakeholders.

Exposure drafts of the Bills Package were released for public consultation from 11 September 2019 until 9 October 2019. Workshops were held in seven locations across the country for industry, state and territory governments and departmental officers during this time. Fifty three industry representatives and peak bodies attended the sessions.

Information on the Bills Package provided on the department's website was viewed 861 times. The department received 10 submissions from businesses, industry groups and interest groups. The submissions were generally positive and did not lead to substantial changes to the 2019 Bill prior to introduction.

Stakeholders expressed widespread support for the expanded range of penalties and sanctions in the 2019 Bill. The streamlining of arrangements to appoint third party officers was welcomed, as was the legislating of consideration periods in relation to a number of applications.

Some meat industry stakeholders have raised concerns about the potential costs associated with transition to the new framework. The department is working with stakeholders to understand and address their concerns. Already work is progressing to ensure that as many regulatory controls as possible will transition. Where regulatory controls are not able to be transitioned, affected stakeholders will be consulted. Work is progressing to identify and manage other implementation activities in advance of commencement, such as changes to legislative references on health certificates which are being managed in consultation with trading partners to ensure trade is maintained.

Maintaining market access is considered a key risk in implementing the new export legislative framework. The Department's priority is effective engagement with trading partners to understand and address any concerns they may have. Engagement commenced in the early stages of the project and is ongoing. Trading partners are being kept informed about progress in the development of the new legislative framework through sanitary and phytosanitary (SPS) notifications, which has been updated as steps in the project have been completed. Trading partners have also been engaged directly by the department's agricultural counsellors and at other opportunities, such as during bilateral negotiations and in the margins of multi-lateral meetings. No concerns have been raised.