

Please quote: 53202/PS03/IGR

Mr Brenton Holmes
Senate Committee Secretary
Select Committee on the Free Trade Agreement
between Australia and the United States of America
Parliament House
CANBERRA ACT 2600

Dear Mr Holmes

Thank you for your letter of 6 April 2004 concerning the establishment of a Select Committee to inquire into the free trade agreement between Australia and the United States.

The Queensland Government has taken a keen interest in the negotiation of the proposed Australia-United States Free Trade Agreement and welcomes your invitation to provide a submission to your inquiry.

The Queensland Government has provided a submission to the Joint Standing Committee on Treaties on this matter. In lieu of a separate submission, I have enclosed a copy of this submission for the Select Committee's reference.

I look forward to reviewing the findings of your inquiry. Should you require clarification on any aspect of the Queensland Government's position regarding the Australia-United States Free Trade Agreement, please contact Ms Cherie Morrison of my Department on 3224 6834.

Yours sincerely

PETER BEATTIE MP
PREMIER AND MINISTER FOR TRADE

**QUEENSLAND GOVERNMENT SUBMISSION
TO THE INQUIRY INTO THE AUSTRALIA-UNITED STATES FREE TRADE AGREEMENT**

Overview

Mindful of its potential to provide better market access for Queensland's current and future exporters, the Queensland Government has always supported the concept of a free trade agreement with the United States. In the absence of effective and timely multilateral negotiations, the pursuit of bilateral agreements is considered necessary to ensure that the trade liberalisation agenda is progressed.

In this context, the Queensland Government welcomed the commencement of negotiations toward a free trade agreement with the United States. The United States is an important market for Queensland and there are significant barriers to trade in key areas of interest to Queensland.

The Queensland Government acknowledges that the agreement will deliver benefits to Queensland. At the same time, the Queensland Government notes that some key areas of potential gain were not covered in the eventual agreement and that the exclusion of sugar from the deal and the long phase in time for reductions in specific US tariffs are particular disappointments.

There are also several outstanding concerns that the Queensland Government wishes to raise with the Committee prior to it making a recommendation on the ratification of the agreement by the Commonwealth Government. These concerns are the focus of this submission.

National Interest Analysis

The Queensland Government is disappointed with the National Interest Analysis (NIA). The NIA does not provide a suitable basis to begin to make an informed assessment of the net benefits of the AUSFTA on Australia. Nor does the Regulatory Impact Statement meet established standards.

A concern of the Queensland Government arising from the NIA is the broader issue of its impact on public confidence in the checks and balances in the treaty making process. It is often stated that the NIA is a mechanism that ensures that agreements are only entered into if they are of benefit to Australia. While the Queensland Government agrees that the proposed AUSFTA is in the national interest, it does not believe that the NIA provides a balanced and convincing argument of why this is the case nor does it address many of the enduring community concerns.

The Committee would be aware that the paucity of serious analysis could fuel existing community anxiety about the agreement and support perceptions that the Commonwealth Government is holding back information from the community.

Centre for International Economics Report

The Queensland Government has reviewed the report prepared by the Centre for International Economics for the Commonwealth Government. The Queensland Government believes that the choice of the economic models used in the analysis was appropriate. The G-cubed and GTAP models have both been extensively used for this type of analysis and are widely accepted by economic modelling professionals. The assumptions underlying the modelling also appear to be generally appropriate and are considered to be conservative in some instances, particularly in relation to the extent of dynamic productivity gains and allocative efficiency gains.

The report incorporates a very detailed analysis of the direct (commodity-specific) impact of the AUSFTA on tariff and tariff-equivalent import quotas. The assumptions that have been incorporated in the baseline for this modelling, including the treatment of other existing unilateral and bilateral trade agreements, appear to be appropriate, with the services trade tariff equivalent estimates being the only component that is not adequately explained.

The modelling results find that the AUSFTA will have created an additional \$52.5 billion in GNP in Australia by 2026, in net present value terms. However, the Queensland Government notes that around 60% of the projected improvement in real GNP is through increased investment and believes that the report would have benefited from a more detailed discussion and more transparent sensitivity analysis on this investment channel aspect.

When DFAT commissioned the CIE study, DFAT officials advised the Queensland Government that the CIE report would provide an analysis of the impact of the AUSFTA on the States and Territories. The Queensland Government is deeply disappointed with the resultant aspects of the study dedicated to State and Territory implications (chapter 7). The information provided is little more than a single page in a document of over 150 pages. Queensland is disappointed about this.

It should also be noted that the regional results generated from the GTAP model reveal that Queensland will take 17% of the national gains across all industries, compared with its current GDP share of 17%, and will take 20% of the national gains in the agriculture, forestry and fishing industry, despite the omission of sugar from the AUSFTA. Yet sugar accounts for approximately 22% of Queensland's agricultural exports and 6% of Queensland's total exports. Furthermore, these gains do not fully represent the increased real investment and accumulation resulting from the reduced equity risk premium generated. Therefore, the Queensland government approaches the Queensland statistics with caution.

Pace of the negotiations and access to negotiating texts

The Queensland Government would like to acknowledge the genuine efforts on the part of the officials from the Department of Foreign Affairs and Trade to be more inclusive than during previous negotiations.

Notwithstanding these efforts, the Queensland Government has significant concerns about the way in which the Commonwealth Government has included States and

Territories in the negotiation process. The Queensland Government has been arguing for some time that because trade agreements have such wide ranging impacts on States and Territories it is vital that a partnership approach across levels of Government is taken.

Due to the pace of the negotiations, the process employed with respect to the treaty text was problematic in facilitating informed consideration of the issues and in enabling Queensland Government officials to fully comprehend the treaty's full implications for existing and future policy decisions and legislation. At the conclusion of negotiations, States and Territories had only been provided with drafts of four chapters. These were the chapters on Cross Border Trade in Services, Investment, Government Procurement and Financial Services. It was extremely difficult, if not impossible, to assess the full implications of the treaty when details such as the general exceptions and horizontal commitments were not known. This compromised the Queensland Government's capacity to provide definitive input to the final aspects of the negotiations.

Consequently, there may be matters captured by the Treaty which may prove to be problematic in the future which could have been avoided through a more open and transparent process. The scale of these policy and regulatory issues may not now be known until the treaty is executed and the various provisions 'tested' through judicial means.

The consultation process also proved problematic as it prevented meaningful consultation with state-based peak bodies and other stakeholders. The final two rounds of negotiations took place in quick succession and the final round was completed during the time that the Queensland Government was governed by caretaker conventions.

Queensland Government officials were contacted by Department of Foreign Affairs and Trade officials the day prior to the date that the negotiations were concluded to be informed that the negotiators were likely to conclude the deal without improved market access for sugar. No other details pertaining to the near-final deal were provided by the Department of Foreign Affairs and Trade at that time. Queensland is disappointed that this significant aspect of the negotiations was not informed at the ministerial level.

Local government consultation

The Queensland Government holds concerns that despite the fact that the AUSFTA will impact upon local governments, the Commonwealth Government has not directly consulted with local government other than via the national peak body. Further, by the Commonwealth Government requiring that all information provided to the Queensland Government be kept confidential, the Queensland Government was prevented from keeping the local tier of government informed during the negotiations.

This concern was previously raised by the Queensland Government in respect to the 2003 'offer/request' round of GATS negotiations. Given Queensland's highly decentralised system of local government and recognising that the Brisbane City Council is the nation's largest local authority with an annual budget greater than that

of the State of Tasmania, this issue remains of significant concern. The Queensland Government believes that this issue must be appropriately addressed for any future negotiations.

The Queensland Government recognises that existing local government non-conforming measures are exempted from the provisions of the agreement and that future regulation and practices will need to be compliant with the agreement. However the Queensland Government also holds concerns that this arrangement has the potential to create a two-tiered system of councils right across Australia where councils with existing non-conforming measures are able to continue to apply those non-conforming measures but others would be prevented from introducing similar measures in the future.

Expropriation and Government Regulatory Actions

The extent of discretionary interpretation of many of the Articles in the investment chapter promotes uncertainty in the areas of government regulatory actions and governments' future policy options. Of particular concern is that there are insufficient guarantees to ensure the Queensland Government's future strategy for sustainable natural resource management will be unimpeded by the obligations imposed in the investment chapter, particularly the expropriation provision.

AUSFTA prohibits both direct and indirect expropriation of an investment of the other Party except where it is taken for a public purpose, in a non-discriminatory manner, in accordance with due process of law and on the prompt payment of compensation. The Commonwealth Government's rationale for agreeing to the expropriation provision is that it protects Australia's investment interests in the US.

The Queensland Government holds the view that the expropriation and compensation provisions result in an extension of rights to property owners that do not exist currently under Queensland legislation and go beyond current Government policies. It is the Queensland Government's view that these provisions provide too much scope for private US companies (through their government) to challenge the Queensland Government's decisions relating to measures taken to ensure sustainable water and land use and environmental protection.

The compulsory payment of compensation is not consistent with the Queensland Government's existing capacity to determine under what circumstances compensation is appropriate. Despite advice to the Commonwealth Government in this regard, no scope was granted by DFAT for exclusion of measures relating to the protection of exhaustible natural resources (for sustainable management purposes) from the investment chapter obligations. The Queensland Government notes that the Singapore-Australia Free Trade Agreement (SAFTA) also carries expropriation provisions however a general exception exists for measures relating to the conservation of exhaustible natural resources. The Queensland Government questions why the AUSFTA was treated differently.

DFAT officials have advised the Queensland Government that State and Territory government action is protected by the following clause in annex B to the investment chapter:

“Except in rare circumstances, non-discriminatory regulatory actions that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment, do not constitute indirect expropriation”

This raises two issues – first, it leaves state governments without capacity to take non-compensatable action in certain circumstances for cancellation of leases or permits (direct expropriation), if they are to comply with the agreement. In a small number of cases the Queensland Parliament has passed legislation to exclude a claim for compensation upon cancellation of a permit/lease. Secondly, the Annex B limitation to the indirect expropriation provisions leaves significant scope for discretionary application.

Ultimately this can only be clarified through case law developed out of dispute settlement on these provisions. On this basis the Queensland Government would like the Committee to note its opposition to the inclusion of mandatory compensation provisions with no exclusion for measures relating to the sustainable management of natural resources, as is provided in other trade agreements to which Australia is party, such as the SAFTA.

The Queensland Government is concerned that mandating the payment of compensation and extending that right to instances of indirect expropriation creates disparity between the rights of foreign and domestic investors and it also limits the scope of State Parliaments to legislate.

As the Commonwealth Government is the Party to this agreement, and would therefore be responsible to provide compensation/penalties for non-compliance, it is not clear how the Commonwealth Government would manage any recourse on compensatory action or penalties with the State and Territory governments. The Queensland Government has not been offered any assurances by the Commonwealth Government in this regard. Without such an assurance, the State cannot be certain of full implications. The Queensland Government would like the Committee to seek clarification from the Commonwealth Government in this regard.

It is also not clear if the Commonwealth Government intends to invoke the external affairs powers of the Constitution to ensure compliance with the agreement should consultations with a non-compliant jurisdiction fail to provide a resolution. The Queensland Government urges the Committee to seek written assurances from the Commonwealth Government that it does not intend to rest on its external affairs powers to override the State-based non-compliant legislation.

Regulating for the environment

The Queensland Government acknowledges that the Environment chapter is not a standard setting chapter, and seeks to ensure that respective environmental laws are enforced.

The benchmark for effective enforcement of State environmental laws is unknown, however, the chapter provides for some flexibility and discretion for Parties with

respect to the environmental standards they apply and resources allocated to investigatory, prosecutorial, regulatory and compliance enforcement operations.

The Environment chapter defines those environmental laws covered by the investment chapter as those “to which a Party exercises sovereignty, sovereign rights or jurisdiction”. In Australia’s case this would limit the scope of the chapter to federal environmental laws, that is, those in which the Commonwealth Government has jurisdiction. However, DFAT officials suggest that, under this chapter, the Commonwealth Government would take responsibility for its own compliance *and* the compliance of State and Territory Governments. DFAT officials suggest that inclusion of Australian State and Territory laws into the scope of the Agreement was necessary to ensure equivalence of commitment with the US.

This situation presents concern for the Queensland Government. It raises questions about what response the Commonwealth Government might take in relation to a state government should the Commonwealth Government incur compensation costs in relation to a dispute over a state’s non-compliance with the obligations of the chapter. Alternatively, it raises questions about whether the agreement provides the Commonwealth Government with scope to increase its jurisdiction in relation to environmental laws by introducing legislation to ensure compliance with the Agreement under its ‘external affairs’ powers. Either way, it demonstrates the need for intergovernmental consultation and agreement on the domestic implementation of the obligations of this chapter.

The institutional arrangements required under this chapter also raises issues in relation to Commonwealth/State relations. The Agreement provides for a Joint Committee of the Parties, or if considered necessary, a sub-committee on environmental affairs, to oversee the operation of the chapter. The chapter specifically provides for national advisory committees to provide advice on the implementation of the chapter. The Queensland Government requests that a clear commitment be sought from the Commonwealth Government for State and Territory governments to be consulted/involved in this respect.

The AUSFTA requires the negotiation of a US-Australia Joint Statement on Environmental Cooperation in the context of ongoing bilateral, regional and multilateral environmental activities. It also requires the Parties to consult on negotiations in the WTO regarding multilateral environmental agreements and enhance the “mutual supportiveness of multilateral trade and environment agreements to which they are both Parties”. The Queensland Government holds some concerns that the emphasis on a closer alliance with the US in multilateral trade and environment negotiations provides scope for the US to exert greater influence on Australia’s negotiating position at international fora on the environment.

Utilities

Given that public utilities such as water, transport, electricity and gas services are supplied in an environment where commercial suppliers exist, and to some extent compete, with government, these services do not meet the criteria of “services supplied in the exercise of government authority”. This means that these particular

services would not enjoy the exception for government services and as such these services are subject to the provisions of the agreement.

For public policy reasons, the Queensland Government may wish to place limitations on the way in which public water utilities provide services in the future. This could include limiting who is able to provide these services as well as how they are provided.

The Queensland Government's current policy of regulating electricity and gas prices to non-contestable customers and restricting entry into the gas and electricity markets do not conform to the provisions of the CBTS chapter.

Queensland Government officials rested on advice from DFAT in December 2004 that outlined a draft list of Australia's Annex II reservations, which included a reservation to adopt or maintain any measure with respect to the provision of public utilities. It was believed that reservations for water, gas and electricity would be taken by the Commonwealth Government. However, in the final text of the AUSFTA this reservation is clearly absent.

In spite of the Queensland Government's subsequent attempts to secure an Annex II reservation for utilities, DFAT officials have responded to these requests with the view that there is no need for reservations to cover normal government regulation in relation to water, electricity, and gas services as State and Territory governments are not prevented under the AUSFTA from applying appropriate regulations, including regulations aimed at environmental protection or other important public policy objectives. In addition, the national treatment obligations in both the CBTS and Investment chapters is subject to the limitation that it only applies to US service suppliers or investors who are "in like circumstances" to Australian service suppliers or investors. This allows scope for appropriate regulatory distinctions to be made between service suppliers and investors on the basis of objective criteria establishing that they are not in like circumstances. However the Queensland Government believes that this is open to considerable discretion in interpretation and application.

Investor-State Dispute Settlement mechanism (ISDS)

Throughout the negotiations the Queensland Government was steadfastly opposed to the introduction of an investor-state dispute settlement (ISDS) mechanism and as such, the Queensland Government acknowledges the Australian negotiators' efforts to ensure that the AUSFTA did not establish such a mechanism.

However, the Queensland Government still holds some concerns that the potential for the means by which an ISDS could be introduced in the future remains. The AUSFTA requires that a 'change in circumstances' must occur in order to trigger discussions between the Parties on the establishment of an ISDS mechanism. The Queensland Government notes assurances from DFAT that the change in circumstances would need to be quite significant, although this interpretation is not clear from the text of the agreement. There has been much debate about this issue and vast legal opinion publicised. The Queensland Government reaffirms its opposition to any establishment of an ISDS mechanism. The Queensland Government therefore asks that the Committee seek clarification from DFAT as to the exact extent of

‘change in circumstances’ required to trigger discussions for the introductions of an ISDS mechanism.

Pharmaceutical Benefits Scheme (PBS)

The Queensland Government acknowledges various Commonwealth Government statements that the AUSFTA will not affect medicines prices, nor the viability of the PBS.

The Queensland Government recognises that some requirements of the AUSFTA could have a positive effect to enhance Pharmaceutical Benefits Advisory Committee (PBAC) transparency, and possibly accelerate processes to get medicines to market. Other elements, such as the review process, have potential to slow the process. The Queensland Government also recognises that the transparency provisions could enhance the ability of the PBAC to provide information on the basis of decisions to State and hospital drug companies, thus assisting their operations.

The Queensland Government notes that the Commonwealth Government will make an independent review process available at the request of any applicant seeking inclusion on Australia’s PBS schedules. Although there is currently an existing administrative appeal process in place, this is an additional measure and there is no detail yet of how the review panel would operate and who it would comprise. The Commonwealth has also agreed to a medicines working group comprising US and Australian federal officials to promote discussion and mutual understanding. However, again, it is still unclear what the decision-making mandate of this group is. It appears through these increased measures Australia could be adversely impacted by:

- Providing opportunities for US drug companies to challenge drug decisions;
- Reducing the ability of the Government to keep certain drugs off the PBS list; and
- Placing additional public pressure on the Commonwealth Government to include prescription drugs that were previously banned from advertisement.

The Queensland Government asks the Committee to seek an explanation from the Commonwealth Government as to how it intends to manage these additional processes and possible US pressures and at the same time avoid any increase in medicine prices.

The Queensland Government also asks that the Committee seek clarification from the Commonwealth Government regarding the definition of “federal healthcare program” noted in Article 2 of the Annex C, Chapter 2 to confirm or deny whether provisions of the Australian Healthcare Agreement are covered by this article and to explain to the State and Territory governments whether this would have reach to State programs.

Blood Plasma

The Queensland Government acknowledges that provisions relating to Blood Plasma Fractionation will continue to protect the quality of plasma products in Australia as they will be derived from blood donated in Australia and will continue to be regulated by the Therapeutic Goods Authority.

However, under the AUSFTA, the Commonwealth Government agrees to “a review of blood fractionation services and to recommend to States that future arrangements for the supply of blood be made in accordance with the Government Procurement chapter. This suggests that US firms will be able to tender to provide blood fractionation services (within the context of standards established by government).

The Queensland Government recognises that the side letter on blood plasma allows for Australia to continue insisting that blood products for domestic use be derived from locally sourced blood. The Queensland Government believes that this allows for Australia to maintain the current standard of blood products. Any change to current arrangements would be strongly opposed by the Queensland Government.

Quarantine aspects

US interests have often taken issue with Australia about its quarantine arrangements and this issue received significant attention from the media and community groups. Specifically, there were concerns that the US would demand a weakening of Australia’s strict quarantine arrangements and provide for opportunities for Australia’s decisions to be challenged beyond existing mechanisms, giving undue power to US interests.

The Queensland Government notes the AUSFTA does not require a lowering of Australia’s quarantine standards. The Sanitary and Phytosanitary (SPS) Chapter does not attempt to override existing international arrangements but reaffirms the ‘primacy of existing rights and obligations under the WTO Agreement’.

The Queensland Government asks that the Committee seeks clarification on the operation of the two committees being established under the AUSFTA. One is a forum for enhanced mutual understanding and has trade, quarantine and food safety representation. The second is a Working Group to help resolve specific animal and plant health matters. It is unclear how the State and Territory governments might have input into these committee’s activities or what status their deliberations might hold. Reassurance is also sought that the proposed arrangements will not result in increased pressure from US interest on Australia SPS decision making processes.

Sugar

The sugar industry is extremely important to Queensland, particularly to many of its regional economies. Queensland accounts for 95% of Australia’s sugar production and the sugar industry supports approximately 37,000 Queenslanders.

The Queensland Government commissioned the Centre for International Economics to assess the potential impacts of the AUSFTA on the sugar industry. This study explored a range of scenarios and concluded that the FTA had the potential to deliver benefits to the Australian sugar industry of over A\$2 billion dollars for the period to 2015.

It follows that the opening-up of the US’s highly protected sugar market was a key priority for the Queensland Government. That the agreement did not gain additional access for sugar is a significant disappointment for the Queensland Government and

greatly reduces the economic benefits that might have been derived from the agreement.

It is recognised that a concession from the US in this area could not be secured. The Queensland Government urges the Commonwealth Government to continue to seek market access improvement for Australian sugar through the multilateral arena.

Services

The Queensland Government is disappointed that the AUSFTA chapter on services does not offer significant overall gains in the immediate term. For the most part, the agreement binds current levels of non-conformity with the obligations of the chapter representing a 'status quo' trade position in relation to services.

While the chapter seeks to require that both parties provide non-discriminatory treatment to each others' service providers, the market access obligation which is intended to prevent quantitative restrictions (such as caps on the number of providers permitted to operate in a particular sector) appears to be made somewhat redundant due to the reservation that both parties have taken. The Queensland Government's interpretation of this reservation is that the market access obligation would now only apply where Australia or the US already has made market access commitments under the WTO Agreement on the Trade in Services (GATS). In other words, beyond existing GATS commitments, governments are not in any way constrained from imposing measures in respect to services sector in a manner that contravenes the market access principal. As the US also enjoys this flexibility, the real gains from services liberalisation, pertaining to market access, are significantly reduced.

One of Australia's key objectives in pursuing the AUSFTA was to establish mutual recognition of professional standards and qualifications. However this was not achieved. A Professional Services Working Group has been established with a mandate to promote mutual recognition and other issues relevant to professional services, and make recommendations within two years of the AUSFTA's entry into force. This will require complex negotiations between professional associations and their certifying authorities, usually on a state-to-state basis. If successful, this is likely to provide benefits to Queensland service suppliers including providers of professional, business, education, environmental, financial and transport services.

This is probably the key AUSFTA outcome for professional service providers, but it remains to be seen to what extent this process can deliver commercially relevant results. At this stage it appears that the process for working towards mutual recognition of professional qualification is primarily aspirational and for the most part requires the Parties to encourage its professional bodies to consult on these matters.

The Queensland Government would like the Committee to note that not all professional services are accredited by professional bodies and that a range of services continue to be subject to registration requirements established by the Queensland Government. It follows that the Queensland Government would want to be involved in discussions pertaining to these professional services.

The Queensland Government is also disappointed that the AUSFTA failed to address temporary people movement and visa requirements. However, it is recognised that this was due primarily to the lack of US policy convergence between trade and homeland security. The Queensland Government asks that the Committee urge the Commonwealth Government to seek improvement from the US in this aspect.

Australia enjoys a growing surplus with the US in education services. There is the potential for expansion of Queensland public and private education providers in areas where restrictions may have applied previously. In a side letter to the agreement, the US has undertaken to initiate a review of measures affecting cross-border trade in the higher education sector in certain US states to effect greater transparency. This may provide opportunities for expansion of education exports to the US arising, including the plans for the licensing of Queensland curriculum in the US.

Creative Industries

The affect of the agreement on Australia's audio-visual and arts sectors was subject to robust debate since the concept of a free trade agreement with the US was first mooted.

A general reservation to the agreement allows Australia to both maintain existing measures and introduce new measures for local content rules on what is generally termed 'new media' formats and has reserved Australia's capacity to intervene on 'interactive, audio and video services' upon a finding by the Commonwealth Government that Australian content is not readily available to consumers through such services. The Commonwealth Government has advised that this reservation does not require the government to get the approval of any party to implement measures. It merely places a procedural obligation to consult with affected parties. This means that the US would not be able to veto any future measures that the Commonwealth Government may choose to implement on interactive, audio and/or video services.

The Queensland Government notes that industry has expressed concerns about how these services are actually defined and how onerous the test will be for the Commonwealth Government to determine that Australian consumers are being unreasonably denied Australian content. It could be argued that this reservation offers little protection for Queensland providers of digital and interactive services and the Queensland Government supports industry's claims for clarification to be sought on this matter.

The provisions on expenditure quotas for subscription television are viewed by the Queensland Government as a significant compromise. It will have the effect that up to 80% of all drama expenditure can be for overseas programming and up to 90% for all documentaries, children's, arts and educational programming. The Queensland Government believes that the local content quota on subscription television of 10% of drama expenditure is inadequate. Further, there are concerns that the effect of the AUSFTA is that 80% of channels will be free of *any* Australian local content regulation. Of the remaining 20%, the AUSFTA does not include detail about the mix of programming that may be required to be shown – so for example, the quota could be met with sport or reality television programs. It could be argued that this will not

offer Australian consumers an adequate choice of a diverse range of Australian content to view.

The Queensland Government also notes that a key omission from the definition of 'interactive audio and/or video services' is e-cinema, where movies are beamed directly into cinemas in Australia from Hollywood studio bases. At the moment there is no regulatory intervention by the Commonwealth Government into film distribution and exhibition and, by excluding e-cinema from the new media definition, there will be no opportunity to do so in the future, even if the number of Australian films being released in Australian cinemas reaches an unacceptably low level.

Intellectual Property Rights

The intellectual property chapter of the agreement includes a number of proposed changes to Australia's intellectual property regime. The most significant of these changes is the extension of copyright protection from 50 years after the death of the producer of copyright material to 70 after their death.

The Queensland Government is concerned that this change would have serious implications for large scale users of copyright material who will have to pay significantly more in copyright fees, particularly government, libraries, universities TAFEs and other education institutions.

There are also significant concerns from industry that the extension of copyright protection represents a barrier to innovation by restricting access to intellectual property for longer periods.

Industry Adjustment Packages

In most instances trade liberalisation creates both winners and losers. The Queensland Government has consistently argued that there must be careful examination of those sectors that stand to be negatively affected by trade agreements. Where particular industries do bear a disproportionate share of the costs of trade liberalisation, every effort should be made to mitigate the costs or to assist industry transition.

The recently announced adjustment package for the sugar industry is welcomed by the Queensland Government. However, it remains unclear what additional measures the Commonwealth Government will put in place to respond to further negative impacts arising from the AUSFTA. In fact, the CIE report indicates that there will be a number of industries that will be affected in this way.

In this light the Queensland Government asks the Committee to seek detail from the Commonwealth Government on how it intends to respond with further adjustment packages to industries negatively affected by the AUSFTA. This would include consideration of a funding mechanism to allow educational and research institutions to accommodate the extra 20 years of copyright protection.

Competition provisions – state enterprises

Chapter 14 of the AUSFTA addresses competition-related matters. Of concern to the Queensland Government is that Article 14.8 imposes an obligation upon both Australia and the US to make available public information concerning state enterprises. Potentially, this may include information of a commercially sensitive nature.

At this stage there is not sufficient detail to determine whether this obligation will impose significant additional disclosure requirements upon State and local government owned corporations. The Queensland Government believes that the Committee should seek clarification on this issue.

Involvement in/input to working groups

The AUSFTA contains a range of provisions to establish some twenty working groups. The Queensland Government's understanding is that these working groups are being established to continue negotiations (to a certain extent) on outstanding matters unable to be resolved/agreed upon in the short negotiating timeframe.

Queensland Government officials have previously raised the point with the Department of Foreign Affairs and Trade that State and Territory participation should be invited for some of these working groups, particularly the groups focused on professional services and mutual recognition of standards, the environment, government procurement, labour and SPS.

Domestic Regulation and Transparency

Under the AUSFTA all laws, regulations, procedures and administrative rulings respecting any matter covered by the agreement are to be published or otherwise made available to interested persons. The Queensland Government acknowledges that the intent of this obligation is to promote greater transparency in the making and implementation of bureaucratic decisions and to allow individuals or companies of either country certain rights to natural justices and due process. However, it is not clear whether the Commonwealth Government regards the existing measures in place across all jurisdictions as satisfactory in order for Australia to conform to this requirement. The Queensland Government asks that the Committee explore this aspect with the Commonwealth Government and clarify how it intends to satisfy this obligation.

Conclusions

The ratification of the Australia-United States Free Trade agreement is supported in-principle by the Queensland Government.

On balance, it is considered that the agreement will deliver benefits to the Australian and Queensland economy.

As outlined above, the Queensland Government has identified a number of concerns which it believes the Committee should examine carefully in its deliberations, and where possible, ensure that these issues are clarified prior to the Committee's support for ratification.