EXPLANATORY STATEMENT

Issued by the authority of the Minister for Agriculture, Fisheries and Forestry

Export Control Act 1982

Export Control (Hay and Straw) Orders 2005

Subsection 25(1) of the Export Control Act 1982 ("the Act") provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act or necessary or convenient to be prescribed for the carrying out or giving effect to the Act.

Paragraph 25(2)(g) of the Act provides that the Governor-General may make regulations empowering the Minister to make orders, not inconsistent with the regulations, with respect to any matter for or in relation to which provision may be made by the regulations.

Regulation 3 of the Export Control (Orders) Regulations 1982 ("the Regulations") provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act, with respect to any matter for or in relation to which provision may be made by regulations under the Act.

Subsection 7(2)(c) of the Act permits regulations to be made to prohibit the export of prescribed goods unless specified conditions or restrictions are complied with. The purpose of the Export Control (Hay and Straw) Orders 2005 ("the Orders") is to prohibit the export of hay and straw unless conditions and restrictions specified in the Orders are complied with.

The imposition of conditions and restrictions on the export of hay and straw is needed to protect Australia’s valuable hay and straw export industry from the devastating consequences of _corynetoxin_ contamination.

_Corynetoxin_ contamination of hay or straw is caused when the developing seed heads of some annual ryegrasses are infected by the nematode, _Anguina spp._, carrying the bacterial organism, _Rathyibacter toxicus_. _Corynetoxin_ contaminated hay or straw can cause toxic poisoning of livestock. This is known as annual ryegrass toxicity. The symptoms of annual ryegrass toxicity in cattle closely resemble those of _bovine spongiform encephalitis_ or mad-cow disease and can be fatal. In 1996, three incidents of cattle deaths attributed to annual ryegrass toxicity and associated with Australian hay exports severely threatened to destroy Australia’s hay and straw export industry.

These Orders impose a system for sampling and testing hay or straw exports for _corynetoxin_ contamination to address the significant risk posed to Australia’s hay and straw export industry by annual ryegrass toxicity.

The Australian Quarantine and Inspection Service ("AQIS") consulted extensively with industry on the making of the Orders. The regulation impact statement included in this explanatory statement provides a detailed account of the nature of the consultation.
Details of the amendment are set out below:

PART 1 – Preliminary

Section 1

1. This section provides that the Orders are named the Export Control (Hay and Straw) Orders 2005.

Section 2

2. This section provides that the Orders commence on the day after this instrument is registered. The purpose of this section is to ensure that the Orders come into effect as soon as possible after making in accordance with the new registration requirements under the Legislative Instruments Act 2003.

Section 3

3. This section defines outlines eight definitions for the purpose of the Orders.

Section 4

4. This section states that the object of the Orders is to provide a system for sampling and testing hay or straw for export to minimise the risk of corynetoxin being present in the hay or straw.

Section 5

5. This section declares hay and straw to be prescribed goods for the purposes of the Act. The effect of this section is to enable hay and straw to be regulated under the Act. Regulations may be made for hay and straw exports in accordance with section 7 of the Act. Section 7 of the Act sets out the prohibitions that can be made in relation to the export of prescribed goods. Section 3 of the Act provides that a reference to regulations includes orders.

PART 2 – Export

Section 6

6. This section provides that hay or straw may only be exported if the hay or straw has been sampled and tested in accordance with these Orders and the hay and straw export standard, and the test results relating to the hay or straw do not show the presence of corynetoxin. The hay and straw export standard is defined in section 3 of the Orders to mean the document entitled “Standard for minimising the risk of Corynetoxin contamination of hay and straw for export”. This document is published by the Department and may be obtained from the Australian Quarantine Inspection Service in Canberra or on internet at www.daff.gov.au.

7. The purpose of this section is to ensure that the objectives of the Orders are met and that samples pertaining to hay or straw intended for exported are tested and
found to be free from Corynetoxin contamination. Failure to comply with this section is an offence under section 7A of the Act.

Section 7

8. This section sets out the procedures that must be followed in relation to hay or straw intended for export. These procedures must be carried out in accordance with the hay and straw export standard. The procedures are listed in the sequence in which they are to occur – that is, the hay or straw must be sampled, the sample must be labelled or otherwise identified, and the sample must be tested by an approved laboratory.

9. As with the prohibitions in section 6, these procedures must be complied with. Section 7A of the Act provides that is an offence to falsely represent to an authorised officer, either expressly or by necessary implication, that conditions or restrictions specified in the regulations (or orders) applicable to goods have been complied with. Sections 6 and 7 of the Orders constitute conditions and restrictions for the purposes of section 7A of the Act.

10. Failure to comply with the procedures in this section may result in the contamination of hay or straw for export. This may adversely affect the reputation of Australia’s hay and straw export industry and, by association, other Australian export industries.

Section 8

11. This section deals with notices of intention to export hay or straw. Subsection 8(1) specifically incorporates Part 8 of the Prescribed Goods (General) Orders 1985 (“the PGGOs”). Part 8 of the PGGOs sets out the requirements relating to notices of intention to export prescribed goods including those matters that must be included in the notice. The purpose of this subsection is to enable Part 8 of the PGGOs to apply to hay or straw exports.

12. Subsection 8(2) specifies that a person intending to export hay or straw must attach the test results for the hay or straw to the notice of intention to export. This requirement constitutes an additional requirement to those specified in Part 8 of the PGGOs. The purpose of this requirement is to enable authorised officers to view the test results pertaining to the hay or straw intended for export.

Section 9

13. This section deals with export permits for hay or straw. Subsection 9(1) specifically incorporates Part 9 of the PGGOs. Part 9 of the PGGOs deals with export permits. The purpose of this subsection is to enable Part 9 of the PGGOs to apply to hay or straw exports.

14. Subsection 9(2) specifically incorporates order 29 of the Grain, Plants and Plant Products Orders in relation to hay or straw requiring phytosanitary certification. Order 29 of the Grain, Plants and Plant Products Orders sets out the requirements relating to phytosanitary certificates. Some importing countries will require phytosanitary certification for hay or straw.
Section 10

15. This section specifically incorporates Part 10 of the PGGOs. Part 10 of the PGGOs deals with the reinspection of goods. The purpose of this section is to enable Part 10 of the PGGOs to apply to hay or straw exports.

PART 3 – Registered establishments

Section 11

16. This section provides that a person may only prepare hay or straw for export in a registered establishment. An establishment is defined in section 3 of the Act to include premises, and premises is defined in section 3 of the Act to include a building, aircraft, vehicle, ship, a place (whether enclosed, or built on, or not), or a part of any of these things or places.

17. Registration of establishments occurs only in accordance with the regulations and orders under the Act. Registration is necessary to ensure that establishments used to prepare prescribed goods do so in accordance with the requirements specified in the regulations and orders. Registration also enables authorised officers to exercise general powers set out in section 10 of the Act without requiring the consent of the occupier of the establishment. This is essential for the regulation of hay or straw exports from Australia, as it enables authorised officers to enter premises to ensure that the occupier is complying with requirements under these Orders.

Section 12

18. This section deals with the requirements for the registration of an establishment. Subsection 12(1) specifically incorporates Part 5 of the PGGOs with the exception of paragraphs 24(d), 43(d), 51.1(a) and 51.1(f). Part 5 of the PGGOs sets out the requirements for registered establishments including the processes for applying, renewing, varying, suspending or revoking registration. The purpose of this subsection is to enable Part 5 of the PGGOs to apply to hay or straw exports.

19. Subsection 12(2) sets out the matter that the Secretary must be satisfied about before registering the establishment – that is, that the occupier is likely to be able to comply with the requirements of these Orders.

20. Subsection 12(3) provides that a registered establishment remains registered for a period of 6 months after the establishment is inspected and approved as suitable for registration. This is subject to the Secretary’s ability to suspend, cancel or refuse to renew the registration of an establishment that fails to keep records in accordance with subsection 14(1).

21. Subsection 12(4) provides that an occupier of a registered establishment may apply for an inspection of the establishment on payment of the relevant fee. The purpose of an inspection under this subsection would be to ensure that the occupier is complying with the requirements under these Orders. These inspections benefit the occupier of the establishment, as authorised officers are more likely to be satisfied that an export permit should be granted for hay or straw that has been prepared in a
registered establishment that has been shown to comply with the Orders.

Section 13

22. This section imposes an obligation on occupiers of registered establishments to comply with the hay and straw export standard at all times when preparing hay or straw for export. This section is necessary because an occupier of a registered establishment may be involved in sampling, labelling, storing or handling hay and straw for export.

PART 4 – Records

Section 14

23. This section sets out the record keeping requirements for registered establishments. Subsection 14(1) lists the information that must be retained by a registered establishment in relation to each consignment of hay or straw that the establishment prepares for export.

24. Subsection 14(2) provides that the Secretary may suspend, cancel or refuse to renew the registration of a registered establishment that fails to comply with the record keeping requirements specified in subsection 14(1).

25. These requirements are necessary to protect the integrity of the regulatory system in relation to hay and straw. Occupiers of registered establishments must retain appropriate documentation for the purposes of inspections, surveillance or investigations. Inspections, surveillance and investigations may be conducted to ensure that the objectives of the Orders are met. Non-compliance with this requirement may prevent an authorised officer from being satisfied that the hay or straw has been prepared for export in accordance with the conditions and restrictions specified in the Orders.

Section 15

26. This section sets out the record keeping requirements for approved laboratories. Paragraphs (a) to (h) list the information that must be retained by an approved laboratory in relation to each sample of hay or straw that is provided to that laboratory for testing.

27. These requirements are necessary to protect the integrity of the regulatory system in relation to hay and straw. Approved laboratories must retain appropriate documentation so that hay or straw exports can be traced back to the samples provided for testing. A failure to keep records may prevent an authorised officer from being satisfied that the hay or straw has been prepared for export in accordance with the conditions and restrictions specified in the Orders.

Section 16

28. This section sets out the record keeping requirements for exporters. Paragraphs (a) to (e) list the information that must be retained by exporters in relation to export of hay or straw that the exporter conducts.
29. These requirements are necessary to protect the integrity of the regulatory system in relation to hay and straw. Exporters must retain appropriate documentation for the purposes of inspections, surveillance or investigations. Inspections, surveillance and investigations may be conducted to ensure that the objectives of the Orders are met. A failure to keep records prevents an authorised officer from being satisfied that an exporter has prepared hay or straw in accordance with the conditions and restrictions specified in the Orders.

**Section 17**

30. This section provides that an exporter, approved laboratory or a registered establishment must keep the records specified in section 14-16 for a period of 2 years. The purpose of this section is to enable authorised officers to access information relating to a consignment, sample or export of hay or straw 2 years after the record was generated.

**PART 5 – Laboratory approval**

31. This section sets out the requirements for approving laboratories to conduct testing of hay or straw samples in accordance with the method prescribed in the hay and straw export standard.

32. Subsection 18(1) provides that the Secretary may approve a laboratory to conduct testing of hay and straw. A laboratory is defined in section 3 of the Orders to mean a person or organisation whose business is conducting scientific testing. The Secretary’s approval must be given in writing.

33. Subsection 18(2) provides that the Secretary may have regard to whether the laboratory is accredited by a national accreditation body to conduct the relevant testing of hay or straw when considering whether to approve the laboratory under subsection 18(1).

34. Subsection 18(3) confirms that the Secretary may withdraw or suspend the approval of a laboratory, if that laboratory ceases to be accredited by a national accreditation body to conduct the relevant testing.

**PART 6 – Miscellaneous**

**Section 19**

35. This section provides that Part 17 of the PGGOs applies in relation to the export of hay or straw. Part 17 of the PGGOs consists of one order – that being, order 100. This order deals with the compliance with directions of an authorised officer.

36. Order 100 is a penal provision with a level 1 penalty. This means that a person who is guilty of this offence is punishable by a fine of 10 penalty units in accordance with subregulation 4(1) of the Regulations.
37. Regulation 4 of the Regulations provides that if an order provides that the order, or a provision of the order, is a penal provision, a person who fails to comply with the order or provision is guilty of an offence against the Regulations punishable by a fine of 10 penalty units; or if the order or provision specifies that it is a penal provision of a particular level, a fine of the number of penalty units specified for a penal provision of that level set out in the table in regulation 4. Under section 4AA of the Crimes Act 1914 a penalty unit means $110.

38. The level of penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary for the offence because directions of authorised officers must be complied with to ensure the integrity of the regulatory system in relation to hay and straw exports and the potential implications for trade in cases of non-compliance.

Section 20

39. This section provides that Part 18 of the PGGOs applies in relation to the export of hay or straw. Part 18 of the PGGOs deals with the services of authorised officers including provisions relating to the availability of staff and occupational health and safety.

Section 21

40. This section provides that Part 20 of the PGGOs applies in relation to the export of hay or straw. Part 20 of the PGGOs deals with reconsideration of decisions including applications to the Administrative Appeals Tribunal.

Section 22

41. This section provides that Part 21 of the PGGOs applies in relation to the export of hay or straw. Part 21 of the PGGOs consists of one order – that being, order 120. This order provides that the words “Penal provision” when set out at the foot of a provision indicates that any contravention of that provision is a contravention for the purposes of regulation 4 of the Regulations. Where the words “penal provision” appear at the foot of a provision without specifying the level of penalty applying to that offence, the penalty level is taken to be a level 1 penalty (10 penalty units).

A Regulation Impact Statement, agreed by the Office of Regulation Review, for the regulation of the export of hay and straw accompanies this explanatory statement.

Regulation Impact Statement

1. Background

1. Australian export oaten hay is mostly produced in South Australia and Western Australia. In 1999/2000, 398,000 tonnes of hay worth over $AUD123 million were exported to dairies in Japan. As at 30 June 2001, exports of oaten hay to Japan totalled 439,000 tonnes with a value of $AUD110 million. This represents an average growth of 10% over the previous 7 years. Korea and Taiwan are smaller emerging markets. Subsequent seasons have been drought affected however figures
from the Australian Fodder Industry Association (“AFIA”) showed that, at the end of June 2003, approximately 558,973 tonnes of oaten hay were exported with a value of AUD$215.5 million.

2. Australian hay and straw export markets were jeopardised in early 1996 by three separate incidents of cattle deaths attributed to annual ryegrass toxicity (“ARGT”) associated with Australian oaten hay. ARGT is the poisoning of livestock by a toxin known as corynetoxin that is contained in bacterially infected ryegrass. The toxin is produced by the bacterium (R. toxicus), which is carried into the ryegrass by a nematode, Anguina spp. The symptoms of ARGT in cattle closely resemble those of Bovine Spongiform Encephalitis (BSE) or mad-cow disease.

3. An interim protocol for managing the ARGT risk in hay and straw was developed by a consultative group, led by the then Department of Primary Industries and Energy (“DPIE”) (now known as the Australian Government Department of Agriculture, Fisheries and Forestry) and the Department of Agriculture in Western Australia (“AgWA”). The protocol recommended procedures to test the remaining stored hay from the 1995 crop in order to restore importers confidence in Australian hay. The Japanese Ministry of Agriculture and Fisheries also warned the Australian hay and straw industry that trade would be suspended if more toxic hay or straw was exported to Japan.

4. There has been no reported cases of ARGT in Japan since 1996, although it has been detected on numerous occasions within Australia in subsequent years. Since 1996, the majority of exporters have voluntarily tested oaten hay and straw for corynetoxin and most do not export hay or straw with a positive result.

5. This regulation impact statement relates to creating subordinate legislation under the Export Control Act 1982 (“the Act”) to declare hay and straw as prescribed goods. Under the Act, prescribed goods cannot be exported unless they comply with certain regulations.

2. Problem

6. The protocol for testing export hay and straw is not compulsory and as such not all hay and straw exporters are testing consignments for the presence of corynetoxin. About 70% of exporters are following the voluntary protocol, with about 80-90% of all export hay and straw being tested. Hay and straw showing a positive result to corynetoxin is not usually exported but is sold on the local market, depending on the domestic supply of hay or straw at the time. No law currently exists to prohibit the export of corynetoxin contaminated hay or straw.

7. There is a significant risk to the hay and straw export industry posed by variations in pre-export corynetoxin testing and adherence to the voluntary protocol. Large areas of Western Australia and South Australia, and to an unknown extent, areas of Victoria, New South Wales and Queensland are infected with the bacterium and / or nematode. Under current measures, the potential for corynetoxin infected hay or straw being exported from Australia is high. One contaminated consignment resulting in cattle deaths could destroy the export industry for all Australian hay and straw exporters if a ban was enacted to protect local markets. In addition, ryegrass seeds are mixed with most cereal grains, and the potential to affect the export of other
grain crops (for example, wheat) and other plant products is very high. As indicated by the Japanese Ministry of Agriculture and Fisheries in 1995, the likely result of overseas cattle deaths from ARGT would be a ban placed on the import of Australian hay or straw. This ban may be extended to other agricultural products from Australia and could remain in place for several years.

8. In order to reduce the risk of toxic annual ryegrass being included in hay and straw for export, government action is necessary to declare hay and straw as prescribed goods under the subordinate legislation of the Act. Failure to do so would mean that corynetoxin-infected ryegrass may be exported overseas.

3. Objectives

9. The voluntary protocol has been adopted by a majority of the hay and straw industry and includes the identification, sampling, testing and traceability of stored hay and straw. This protocol is loosely administered by the export hay and straw industry.

10. The declaration of hay and straw as prescribed goods under the Act will enable legislation to be made imposing verification prior to export that the hay and straw has been sampled and tested for corynetoxin and the test results are negative. These measures will protect the Australian trade of export hay and straw and potentially grain and other plant products from the risk of an ARGT incident that would place Australia’s export markets in jeopardy. The new legislation would effectively put safeguards in place for the export hay and straw industry to maintain and expand existing export hay and straw markets.

4. Options

4.1 Self-regulation by industry

11. This option would mean that the voluntary protocol would remain in place. If followed by exporters, the protocol would ensure that the export of hay and straw showing positive test results for corynetoxin would be prevented. However, as the protocol is not enforceable, there is concern that not all Australian hay and straw exporters would follow the guidelines for testing hay or straw and may be exporting toxic products.

4.2 Quasi-regulation by the Australian Fodder Industry Association

12. This option would require AFIA to voluntarily implement the protocol. However, not all hay and straw export industry participants are members of AFIA. Therefore, non-members of AFIA would not be obliged to adhere to the protocol.

4.3 Government regulation

13. This option would involve declaring hay and straw as prescribed goods under the Act. Prescribed goods cannot be exported unless they comply with the conditions and restrictions specified in the legislation. Under the legislation, authorised officers of the Australian Quarantine and Inspection Service (“AQIS”) certify all prescribed goods before export in order to meet the product standards specified in the legislation.
14. The prescription of hay and straw would require mandatory testing for the presence of corynetoxins prior to certification for export. Provided that the authorised officer was satisfied that the consignment was sampled and tested for corynetoxin and that the test results relating to the consignment were free from corynetoxin, the authorised officer could issue an export permit.

5. Impact analysis

15. For several years now, industry has been pressing to have hay and straw declared as prescribed goods under the Act in order to prevent the export of hay and straw contaminated with corynetoxin. Prescribing hay and straw under the Act would ensure a consistent and uniform process of sampling and testing to meet the importing countries’ requirements.

16. Failure to prescribe would mean that all exporters of hay and straw, and possibly grain and plant products, are at risk of losing market access if cattle deaths occur in overseas countries due to ARGT poisoning from Australian hay and straw. However, the effect of government regulation, including compulsory sampling and testing of all hay and straw intended for export, would present an additional financial cost to exporters.

5.1 Self-regulation by industry

17. Continuing with the voluntary protocol would not require any government action or cause any additional impact on AQIS as the regulatory authority. There is concern in the hay and straw export industry that new exporters and some existing exporters are not following the voluntary protocol and this may damage future trade with Japan. A ban on importation of hay and straw into Japan would cost the industry over $215 million per year.

5.2 Quasi-regulation by the Australian Fodder Industry Association

18. AFIA could administer the protocol to help minimise the potential loss of $110m export market but not all exporters, packers or producers are members of the Association. Adherence with the protocol would require compulsory sampling and testing of all hay and straw prior to export. This measure would pose no additional impact on AQIS.

19. Members would incur additional costs as a result of industry implementing the protocol with no additional guarantee of continued access to markets.

5.3 Government regulation

20. The introduction of government regulation would minimise the potential loss of a $110 million export market due to cattle deaths caused by ARGT. The declaration of hay and straw as prescribed goods under the Act would ensure that those goods cannot be exported unless they comply with the conditions and restrictions specified in the subordinate legislation of the Act. The prescription of hay and straw under the Act will result in:
• The auditing of packing and processing establishments to ensure traceability of hay and straw;
• The identity preservation of the product;
• Random sampling at time of export inspection to ensure compliance with the proposed legislation;
• A small increase in export documentation (only for product not exported to phytosanitary markets); and
• Cost of testing the product (for exporters not following the voluntary protocol).

21. The auditing and testing of export hay and straw would be carried out by an authorised officer of AQIS [or an approved third party provider] to ensure the integrity of the test results. This will require additional resources for AQIS. Currently, two laboratories can provide diagnostic services to test for *R. toxicus* in hay and straw (AGWEST Plant Laboratories, Western Australia, and the South Australian Research and Development Institute, Adelaide), and only one laboratory can conduct tests for corynetoxin (CSIRO).

22. The data sources used in making the following assessments are AQIS charge guidelines, AFIA export statistics, and industry clients exporting hay and straw. The extra cost to industry would be:

- Audit charges ($AUD20 per 15 minutes) and;
- The cost of testing (around $AUD15-30 depending on the testing laboratory) for exporters not following the voluntary protocol.

23. It must be noted, however that the testing costs would only impact on those exporters not following the existing voluntary protocol. Current adherents to the protocol are already paying these costs.

24. As most consignments already require phytosanitary certification and are therefore inspected before export, the costs to AQIS for regulating the export of hay and straw would be marginal. The $20 per quarter hour (with a minimum of $40) fee-for-service rate is the current charge by AQIS for inspecting goods before an export permit and phytosanitary certification is issued. A $10.00 documentation fee for an export permit and phytosanitary certificate will be applied plus the cost of audits at $20 per quarter hour (with a minimum of $40) and verification tests at laboratory costs.

25. The additional documentation and audit costs would affect all exporters and packers of hay and straw. Exporters that do not currently comply with the voluntary protocol would incur the extra cost of testing, recording and segregating the product. Benefits of government regulation will flow to both exporters and importing countries. Both parties will be assured that all exported hay and straw is tested and only hay and straw found negative to the bacterial or corynetoxin test is to be exported. With respect to the domestic hay and straw industry, any increases in costs are likely to be small, since around 70% of exporters are already incurring the cost of testing and preserving the identity of their hay and straw.
26. On 8 June 2001, the export hay and straw industry (representatives of which form over 50% of the Australian hay and straw industry) in South Australia and Western Australia and the respective State Departments of Agriculture (AgWA, the Department of Primary Industries and Resources South Australia, and the South Australian Research & Development Institute) held a tele-video conference with AQIS staff in Canberra. Concerns were raised regarding hay and straw exports that may contain corynetoxin. It was agreed that further cattle deaths attributed to ARGT would result in the immediate cessation of hay and straw exports to Japan. As a result, industry and the state government agencies suggested the following solutions:

- Industry should continue with the voluntary protocol;
- The States should enact their own legislation;
- Japan should set standards for corynetoxins; or
- Hay and straw should be declared as prescribed goods under the Act.

27. It was agreed at the conference to create legislation under the Act to declare hay and straw as prescribed goods and to incorporate by reference in the legislation the protocol for sampling and testing hay and straw exports for corynetoxins.

28. On 26 July 2001, AQIS distributed a draft code of practice to industry groups for comment. The draft code of practice (which is now referred to as a standard) sets out the minimum requirements for sampling and testing hay and straw exports for corynetoxins. Stakeholders provided comment on the draft code of practice and it was consequently amended where appropriate. A minority of hay and straw exporters (from New South Wales only) disagreed with the proposal due to the lack of evidence supporting the presence of corynetoxin contamination in NSW. The amended draft code of practice was subsequently distributed to NSW exporters in November 2001 for comment and then again in 2003 and 2004.

29. A further industry meeting was held in Wagga Wagga, NSW on 4 April 2002, which included exporters from NSW, the New South Wales’ Department of Agriculture (“AgNSW”), representatives from AFIA and a single exporter from Victoria. At this meeting, there was majority support for the proposal to declare hay and straw as prescribed goods under the Act. NSW exporters agreed to follow the code of practice as a means of establishing area freedom from corynetoxin contamination. This means that hay and straw will be tested over a period of time in order to provide evidence that corynetoxin contamination does not occur in that area.

30. AQIS consulted with industry and AFIA representatives throughout 2003-2004 regarding the proposed legislation and standard. Both industry and AFIA representatives are anxious for AQIS to implement the new arrangements as soon as possible.

31. The table below lists the exporters who were consulted during the process of developing the proposed legislation and standard. The table also illustrates the approximate tonnage of oaten hay exported by these exporters in 2001.
Table 1 – Major exporters of oaten hay and tonnages exported in 2001 (figures obtained from AFIA on 7 August 2001)

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<thead>
<tr>
<th>State</th>
<th>Exporter</th>
<th>Approximate tonnage exported</th>
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<tbody>
<tr>
<td>South Australia</td>
<td>Balco Australia Pty Ltd</td>
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<tr>
<td></td>
<td>Gilmac SA</td>
<td>40,000</td>
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<tr>
<td></td>
<td>Golden Plains Fodder</td>
<td>40,000</td>
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<tr>
<td></td>
<td>J T Johnson &amp; Son</td>
<td>15,000</td>
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<tr>
<td></td>
<td>Lithgow Enterprises</td>
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</tr>
<tr>
<td>Western Australia</td>
<td>Bodium/Balmain</td>
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</tr>
<tr>
<td></td>
<td>Elders Hay</td>
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</tr>
<tr>
<td></td>
<td>Gilmac WA Hay</td>
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<td>Milne Feeds</td>
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<td>TKK</td>
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<td>Victoria</td>
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<td>Wilson Stockfeeds</td>
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7. Conclusion

32. The options proposed are summarised below and it is submitted that option 3 – declaring hay and straw to be prescribed goods under the Act – will produce the outcome required to protect Australia’s hay and straw export market.

7.1 Option 1 – Self-regulation by industry

33. This option would require the industry to continue with the voluntary protocol that exists, although it appears that not all exporters are testing hay and straw prior to export. This option would result in continued risk to the hay and straw export market.

7.2 Option 2 – Quasi-regulation

34. This option is not suitable as there is no appropriate body to administer the code of practice. The industry body is AFIA but not all hay and straw exporters are members.

7.3 Option 3 – Government regulation

35. This option would involve creating legislation under the Act that declared hay and straw to be prescribed goods and required exporters to demonstrate that the hay
and straw intended for export has been sampled and tested in accordance with the “standard” and that the test results relating to the hay and straw intended for export are free from corynetoxin contamination.

36. This option is the preferred option and would help to maintain access to overseas markets and to protect the long-term interests of the Australian grain and fodder industry as a whole.

8. Implementation and review

37. The Australian hay and straw industry will be informed of any changes to the legislation through representative members of the AQIS Grains Industry Consultative Committee (“AGICC”). Any new operational arrangements will be circulated via quarantine operational notices and industry advice notices by AQIS to industry and stakeholders. This information will also be posted on the Australian Government Department of Agriculture, Fisheries and Forestry webpage.

38. The proposed change in legislation and the introduction of a standard will be set out clearly to industry and stakeholders and will be available on the webpage. The proposed standard will be flexible enough to enable producers, packers and exporters to sample and test their product according to their location and the perceived risk of corynetoxin contamination in their product.

39. Currently, non-prescribed goods avoid the mandatory hygiene standards imposed on prescribed goods. The costs associated with prescribed goods include registration of premises, phytosanitary controls and fit-for-purpose transport units. Many of these costs, however, are already in place (including phytosanitary controls and transport units). The major impact will be on packers and exporters who do not already comply with the current voluntary protocol.

40. The Prescribed Goods (General) Orders 1985, which may be applied to the export of hay and straw, allow for an internal review of decisions, with a further right of appeal to the Administrative Appeals Tribunal. The effectiveness of regulating hay and straw exports will be assessed through audits of packing and sampling establishments and the verification of test results by comparing the export product with the tests results presented at inspection for certification. Audits would be carried out biannually and verification testing would begin at 10% and vary either up or down depending on the results of the verification testing.

41. The Grain Export Program has a policy to review legislation every five years. If, after future consultation with the industry and stakeholders, it was necessary to repeal the legislation, then AQIS will proceed along that path.