

EXPLANATORY STATEMENT

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

Export Control Act 1982

Game, Poultry and Rabbit Meat Amendment Orders 2005 (No.1)

Sub-section 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 to be prescribed or necessary or convenient to be prescribed for the carrying out or giving effect to the Act.

Section 7 of the Act provides that the regulations may, *inter alia*, prohibit the export of prescribed goods unless specified conditions or restrictions are complied with. The term “prescribed goods” is defined in section 3 of the Act to mean “goods, or goods included in a class of goods, that are declared by the regulations to be prescribed goods for the purposes of the Act”.

Subsection 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 made under the Act.

The Game, Poultry and Rabbit Meat Orders (“the Principal Orders”), are made by the Minister under regulation 3 of the Regulations. The Principal Orders are incorporated with the Prescribed Goods (General) Orders (“the PGGOs”) and declare goods to be prescribed goods and specify conditions and restrictions that apply to the export of those prescribed goods, including that the goods shall, in certain circumstances, be prepared in a registered establishment. Part 2 of the Principal Orders set out the requirements for the registration of establishments.

The purpose of the Game, Poultry and Rabbit Meat Amendment Orders 2005 (No. 1) (“the Amendment Orders”) is to make amendments to certain provisions in Part 2 of the Principal Orders. In particular, the Amendment Orders:

- Make amendments to orders 7 and 8 incorporating Australian Standards where:
 - the prescribed goods are game meat or game meat products - the Australian Standard for Hygienic Production of Game Meat for Human Consumption (AS 4464:1997);
 - the prescribed goods are poultry meat or poultry meat products, being goods derived from poultry within the meaning of paragraph (a) of the definition of poultry in order 5 other than ratites - the Australian Standard for Construction of Premises and Hygienic Production of Poultry Meat for Human Consumption (Second edition) (AS 4465:2001); and
 - the prescribed goods are poultry meat or poultry meat products, being goods intended for human consumption that are derived from ratites - the Australian

Standard for Hygienic Production of Ratite (Emu/Ostrich) Meat for Human Consumption (AS 5010:2001).

Additionally, the Amendment Orders:

- insert a new order to name the Orders;
- remove references to edible game offal; and
- correct a stylistic error to differentiate between Schedules to the Principal Orders.

AQIS has established close linkages with the peak bodies and industry sectors operating under the Principal Orders. Feedback from these groups has indicated that they support the revision of the Orders in line with the stated objectives.

AQIS convenes a range of consultative committees as the principal advisory forums for consultation with industry on certification, market access issues and quarantine matters. The peak industry bodies nominate industry representatives to their respective committees. The consultative committees for the game, poultry and rabbit meat and meat products industries have been convened by AQIS in various forms since 1984.

Generally, stakeholders were of the view that it was essential to provide a sound legislative framework for approving the processing regimes for game, poultry and rabbit meat, to ensure confidence in their products on both domestic and export markets. There were no dissenting views to this from the peak industry bodies representing each sector. These are:

- Kangaroo Industry Association of Australia;
- Australian Game Meat Producers Association;
- Australian Ostrich Association;
- Emu Farmers Federation of Australia; and
- Australian Poultry Industry Association.

There is no export rabbit meat industry at the present time.

A Regulation Impact Statement agreed to by the Office of Regulation Review follows the details of the Amendment Orders.

Details of the Amendment Orders are set out below:

Order 1 provides that the name of the Amendment Orders is the *Game, Poultry and Rabbit Meat Amendment Orders 2005 (No. 1)*.

Order 2 provides that the Amendment Orders commence on the day after registration on the Federal Register of Legislative Instruments in accordance with the *Legislative Instruments Act 2003*.

Order 3 provides that Schedule 1 amends the Principal Orders.

Schedule 1 - Amendments

Item 1 inserts a name for the orders as the *Game, Poultry and Rabbit Meat Orders 1985*.

Item 2 removes Paragraph 4(a) providing for the Principle Orders to apply to edible game offal. The Australian Standard for Hygienic Production of Game Meat for Human Consumption (AS 4464:1997) Section 9 “Inspection and Handling of Game Animal Carcasses

and Game Carcasses in Game-Processing Establishments” prohibits the collection of game offal for human consumption.

Item 3 removes the definition in Suborder 5.1 of edible game offal. This is a consequential amendment of the removal of references to edible game offal in the Orders.

Item 4 removes from the definition of game meat in Suborder 5.1 the reference to edible game offal. The Australian Standard for Hygienic Production of Game Meat for Human Consumption (AS 4464:1997) Section 9 “Inspection and Handling of Game Animal Carcasses and Game Carcasses in Game-Processing Establishments” prohibits the collection of game offal for human consumption.

Items 5 and 6 remove from the definition of ‘game meat product’ in Suborder 5.1 the references to edible game offal. The effect of these items correctly reflects that game meat product can be prepared from game meat or can contain a threshold of 5 per cent by mass of game meat.

Item 7 inserts in Suborder 5.1 the definition for ‘ratite’ as being an emu, ostrich or other species of flightless bird.

Item 8 adds after Suborder 5.2 a provision that in the Principal Orders, the words 'Penal provision' at the foot of a provision will indicate that a contravention of the provision is a contravention for the purposes of regulation 4 of the Export Control (Orders) Regulations 1982. Regulation 4 provides that when an order made under the Regulations is a penal provision, a person who fails to comply with the order or provision is guilty of an offence and 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 the number of penalty units is specified in the table.

Item 9 substitutes Order 7 providing that the occupier of a registered establishment preparing game meat or game meat products as a prescribed good, must comply with requirements specified in order 7A and with the Australian Standard for Hygienic Production of Game Meat for Human Consumption (AS 4464:1997).

Where the occupier of a registered establishment is preparing poultry meat or poultry meat products, being goods derived from poultry other than ratites as a prescribed good, the requirements specified in order 7A and the Australian Standard for Construction of Premises and Hygienic Production of Poultry Meat for Human Consumption (Second edition) (AS 4465:2001) must be complied with.

Where the occupier of a registered establishment is preparing poultry meat or poultry meat products, being goods intended for human consumption and derived from ratites as a prescribed good, the requirements specified in order 7A and the Australian Standard for Hygienic Production of Ratite (Emu/Ostrich) Meat for Human Consumption (AS 5010:2001) must be complied with.

Where the occupier of a registered establishment is preparing rabbit meat and rabbit meat products as a prescribed good, the Exports (Meat) Regulations must be complied with. This is the current requirement under the Principal Orders.

Item 10 substitutes Order 8 providing for conditions and restrictions that must be complied with in the specific Australian Standards for the export of prescribed goods being:

- game meat or game meat products;
- poultry meat or poultry meat products, being goods derived from poultry other than ratites; and
- poultry meat or poultry meat products, being goods intended for human consumption that are derived from ratites.

For rabbit meat and rabbit meat products prepared as prescribed goods under the Act, the conditions and restrictions provided for under the Exports (Meat) Regulations are to be complied with. This is the current requirement under the Principal Orders.

Item 11 substitutes with a reference to Schedule 1 to correct a stylistic error. This item will differentiate between different schedules to the Principal Orders.

Item 12 adds to the end of paragraph 14(d) the word ‘and’ to make clear that all the requirements for information to be included on a prescribed tag, set out under paragraphs (a) to (f), are inclusive.

Item 13 removes paragraph 14(e) from the requirements for information to be included on a prescribed tag, set out under paragraphs (a) to (f). The reference contained in paragraph 14(e) to the Third Schedule to the Exports (Meat) Regulations is not required.

Item 14 removes from Order 43, an order providing for ancillary meat inspection services, the reference to edible game offal. The Australian Standard for Hygienic Production of Game Meat for Human Consumption (AS 4464:1997) Section 9 “Inspection and Handling of Game Animal Carcasses and Game Carcasses in Game-Processing Establishments” prohibits the collection of game offal for human consumption.

Item 15 corrects a stylistic error to differentiate between Schedules to the Principal Orders.

Regulation Impact Statement

on the *Game, Poultry and Rabbit Meat Orders (as amended)*

Introduction

This Regulation Impact Statement relates to proposed amendments to the *Game, Poultry and Rabbit Meat Orders (GPRMOs)* made under the *Export Control Act 1982*.

Certain food commodities exported from Australia are defined as ‘game, poultry and rabbit meat’ for the purposes of the *Export Control Act 1982*. Game, poultry and rabbit meat is subject to regulatory control as a condition of export eligibility. The *GPRMOs* (as amended) contain conditions and restrictions applicable to the export of game, poultry and rabbit meat and meat products, which aim to ensure that these products:

- are safe and suitable;
- have been prepared in hygienic conditions;
- are accurately described;
- are processed according to a system that can be audited;

- are appropriately certified where necessary; and
- meet importing country requirements,

thereby facilitating trade.

The basis for this degree of regulatory control is summarised by the National Competition Policy (NCP) review of the *Export Control Act 1982*¹, which found that “non-legislative alternatives could not deliver the same benefits to exports and the nation as can be obtained by legislation. The Committee considers that most overseas governments will continue to insist that Australia retain the legislative power to impose standards for the foreseeable future. It is also clear that trade partners expect certification to be backed by investigative powers and strong penalties to ensure compliance. The Committee concluded that legislation is necessary.”¹

The Australian Quarantine and Inspection Service (AQIS), an operating group of the Australian Government Department of Agriculture, Fisheries and Forestry, administers the *Game, Poultry and Rabbit Meat Orders* [the Orders]. The Orders, promulgated on 29 April 1985 and made under the Export Control (Orders) Regulations 1982 were based on the domestic and international standards (established through Codex*), as well as importing country requirements. Since gazettal in 1985, 4 amendments have been made which addressed various issues relating to definitions, registration, compliance with requirements, conditions or restrictions, official marks, trade description and inspection services.

(*The Codex Alimentarius Commission is the international inter-governmental body –established under the 1994 Agreement on the Application of Sanitary and Phytosanitary Measures – that develops food safety and commodity standards to facilitate trade and promote consumer safety. It is not compulsory but signatories do not depart from it without very good reason.)

Industry overview

World trade in food and agricultural products is more complex and involves greater government intervention than trade in most other manufactured products and services. This complexity and involvement stems from the desire of governments to avoid risks associated with such products including risks to human and animal health and threats to animal welfare and the environment.

Many of the risks originate from the characteristics of the products, eg

- most of the food products are perishable
- many require special storage and/or transportation arrangements
- risks to human health associated with the products are not necessarily physically conspicuous, eg pesticide residues.

For game, poultry and rabbit meat, effective management of these risks is essential as the export of these products has importance to the Australian economy.

In the 12 months to September 2004, Australia exported 20000 tonnes of poultry meat and poultry meat products (gross value \$22 million)², 10147 tonnes of kangaroo meat

¹ Frawley P, Makin L, Nieper R, Wilson B (2000) Export Assurance National Competition Policy Review of the *Export Control Act 1982*, Canberra

² Australia Bureau of Agricultural and Resource Economics (ABARE) Australian Commodity Statistics 2003

(approximately \$40 million)³, 2457 tonnes of wild game boar meat (approximately \$21 million)⁴, 74 tonnes of wild game deer meat (approximately \$370,000)³, 447 tonnes of ostrich meat and 9 tonnes of emu meat. No rabbit meat was exported during this period. The majority of game meat for human consumption was exported, while poultry meat exports represented 3% of total Australian production⁴. A similar or somewhat larger amount of kangaroo meat was utilised for pet food in Australia.

The major markets for game meat include Europe (Russia and EU members), Papua New Guinea, South-East Asia, the Caribbean and South Africa. The major markets for poultry are South-east Asia and the Middle East. While there is no current export trade in rabbits, China is identified as a potential market. Ratite (emu and ostrich) meat is exported mainly to a number of South-east Asian countries.

The number of export-registered establishments to which these Orders apply is poultry (38), game (12), ratite (4) and rabbit (0).

It is estimated that 75% of export production originates through large processing businesses, 20% through medium businesses and 5% through small businesses.

The poultry industry nationally employs approximately 40,000 people while the game meat industry employs in the vicinity of 4000 people on a full-time and part-time basis.

Problem

Commodity and General Orders are made under the Export Control (Orders) Regulations 1982 provided for under the *Export Control Act 1982*. The AQIS export certification for products that are provided for under the ambit of the Game, Poultry and Rabbit Meat Orders (GPRMOs) is currently based upon AQIS approving the processing regimes of these products. There is currently no specific legislative framework for this approval process. However, current administrative practice draws upon a number of recognized sources:

- Australian Standards for the hygienic production of game, poultry and rabbit meat. (The preferred view of industry is that the approval process needs to be performed on a legislative basis by reference to these Standards.)
- Additionally, current practice also draws upon provisions in the Export Meat Orders 1985 where these provisions have been administratively expanded to apply to game, poultry or rabbit meat processing. This practice may not be robust in terms of contemporary administrative law concepts and has also given rise to a situation where AQIS is currently threatened with a legal challenge on the validity of directions made to a game processor based upon Orders that have an objective of regulating 'meat' as opposed to 'game meat'. This legal challenge is estimated to be worth approximately \$2.2 million dollars in damages if successful.

A number of orders in the GPRMOs (Order 7 – Compliance with certain requirements, Order 8 – Conditions or restrictions to be complied with and Order 14 - Information to be included on tag) refer to the Exports (Meat) Regulations as in force on 31 December 1982. The

³ Game meat industry bodies

⁴ Game meat industry bodies

reference in the Orders to the Regulations in this way is consistent with section 49A of the *Acts Interpretation Act 1901*.

The Exports (Meat) Regulations were repealed in 1982 by the Export Control (General) Regulations, gazetted 17 December 1982 GN S 263. There is legal interpretation on the effect of the repeal on the *GPRMOs*.

1. If the repeal of the Regulations meant that they no longer had any effect for the purposes of the *GPRMOs* this would mean, in relation to the operation of Order 8 of the *GPRMOs* that, since the repeal of the regulations, Order 8 has prohibited exports of all the goods to which the *GPRMOs* apply. It is considered that a court would seek to avoid such a result because it would mean that all exporters who had exported relevant goods since the repeal would be liable to prosecution (*Export Control Act*, s. 8(3)(a)).
2. It is also possible that, with the repeal of the Regulations, exporters have no conditions or restrictions to comply with. That is to say Order 8 is to be read as not containing a prohibition because the prohibition only operates to the extent that the specified conditions or restrictions are not complied with and, if there are no such conditions or restrictions, then there is no effective prohibition. It is considered that a court would not favour this interpretation, as it would have obvious health and safety implications.
3. The preferred view is that, despite the repeal of the Regulations, Order 8 continues to apply in accordance with its terms. The Order refers to conditions and restrictions that applied at that date remain ascertainable, despite the later repeal of the Regulations. Other references in the *GPRMOs* to the Regulations are to be similarly read.

To overcome these issues of interpretation it is, however, considered necessary that the *GPRMOs* are amended to replace reference to the Regulations.

It is preferable that the Orders incorporate by reference the relevant Australian Standards:

- where the prescribed goods are game meat or game meat products - the Australian Standard for Hygienic Production of Game Meat for Human Consumption (AS 4464:1997);
- where the prescribed goods are poultry meat or poultry meat products, being goods derived from poultry within the meaning of paragraph (a) of the definition of **poultry** in order 5 - the Australian Standard for Construction of Premises and Hygienic Production of Poultry Meat for Human Consumption (Second edition) (AS 4465:2001);
- where the prescribed goods are poultry meat or poultry meat products, being goods derived from poultry within the meaning of paragraph (b) of the definition of **poultry** in order 5 - the Australian Standard for Hygienic Production of Ratite (Emu/Ostrich) Meat for Human Consumption (AS 5010:2001); and

- where the prescribed goods are rabbit meat and rabbit meat products - the Australian Standard for Hygienic Production of Rabbit Meat for Human Consumption (AS 4466:1997).

The objective is that, as far as is possible, all food safety and wholesomeness requirements relevant to the production of game, poultry and rabbit meat for export will be contained within the Standards, leaving the Orders to largely deal specifically with the mechanics of export.

This approach is consistent with key recommendations of the NCP review of the *Export Control Act 1982*⁵ which recognized that Australian Standards for meat hygiene should be the basis for operational food safety and wholesomeness controls in the meat industry, whether it be for export or domestic production. (Review recommendations are contained in Attachment 1).

It is to be noted that Canada has, in particular, queried the legislative underpinning of these Orders.

Objectives

The objectives in amending the GPRMOs are to:

- ensure a sound legislative framework for approving the processing regimes for game, poultry and rabbit meat
- remove reference to the Exports (Meat) Regulations 1982 and recognise the relevant Australian Standards as the basis for operational food safety and wholesomeness controls in the game, poultry and rabbit meat industries in accordance with the recommendation of the NCP review of the *Export Control Act 1982*.

The NCP review stated that the objective of export legislation is to facilitate, enhance and sustain Australia's exports by providing authority for the imposition of systems which:

- ensure compliance with overseas country requirements, and
- ensure compliance with any other standards established through government/industry consultation on the basis of net public benefit.

The main objective of the Orders is to facilitate trade. The facilitation is based on adequate food safety and wholesomeness procedures and accurate descriptions of product. Audit provisions are required to substantiate the adequacy of these programs. On this basis certification is provided as required by importing countries, thereby facilitating trade.

Australian Meat Standards – their significance to the amended Orders

In 1995, following the 'Garibaldi' food poisoning outbreak in South Australia, the Agriculture and Resource Management Council of Australia and New Zealand determined that aspects of all existing national meat industry codes relevant to human health would be mandated by amendment of legislation in all States and Territories.

⁵ Frawley et al op cit

Meat Standards Committee commenced a fundamental review of existing codes of hygienic practice to express mandatory national standards in outcome terms. Four of those standards produced in the series of meat hygiene standards and of direct relevance to this Regulation Impact Statement are:

- Australian Standard for Construction of Premises and Hygienic Production of Poultry Meat for Human Consumption (Second edition) (AS 4465:2001);
- Australian Standard for Hygienic Production of Game Meat for Human Consumption (AS 4464:1997);
- Australian Standard for Hygienic Production of Ratite (Emu/Ostrich) Meat for Human Consumption (AS 5010:2001); and
- Australian Standard for Hygienic Production of Rabbit Meat for Human Consumption (AS 4466:1997).

The focus of the standards is on essential health and hygiene issues and provides for standards that are consistent with the principles and objectives of the world standards contained in *Codex Alimentarius, Volume 10 (1994)*.

Importing requirements set by overseas governments for access to their individual markets are not dealt with under these Standards but are dealt with under Commonwealth legislation dealing with export certification. Similarly, special requirements set by government or industry for all exporters of a particular product to a particular market are beyond the scope of, and in addition to, the requirements specified in these Standards.

The prime objective of the Standards is to ensure that game, poultry and rabbit meat and meat products for human consumption comply with food safety requirements and are wholesome. The food safety outcomes for each stage of production are specified in the Standards together with requirements to ensure that game, poultry and rabbit meat and meat products are wholesome or else are removed from the food chain and dealt with separately. The Standards reflect the fact that food safety risks extend through the food preparation chain and are not confined to the preparation, handling and storage of end products.

The Standards incorporate other objectives so that wholesomeness can be assured. These objectives include the need for systems to be in place for the accurate identification, traceability, effective recall and integrity of meat and meat products. They also include animal welfare objectives as they impact on food safety and on public expectations as to wholesomeness.

The Standards reflect the shared responsibility between industry and governments for food safety. Management and production practices underpin the Standards as do process controls based on the HACCP approach with its emphasis on risk assessment and risk management.

The Standards set out the outcomes required for the receipt and slaughter of animals (where appropriate), field harvesting (where appropriate), the dressing of carcasses, the processing (including further processing), packaging, handling and storage of meat or meat products. They also consolidate rules for the construction of premises and transportation of meat and meat products.

The Standards are in addition to other requirements under Commonwealth, State and Territory legislation that also apply to the production of game, poultry and rabbit meat and meat products. These include requirements in the Australia New Zealand Food Standards Code such as those relating to additives, contaminants and labeling.

An objective in the development of the Standards for food safety and wholesomeness was to establish “harmonised” requirements for the production and transportation within Australia of game, poultry and rabbit meat and meat products for human consumption that:

- (a) could be applied to all game, poultry and rabbit meat and meat products regardless of whether they are produced for the domestic or export market;
- (b) were consistent with world standards set out in Codex Alimentarius Volume 10;
- (c) would allow for innovation and flexibility in the industry by identifying outcomes or performance based principles in preference to prescriptive requirements;
- (d) could be readily incorporated into a broader legislative framework; and
- (e) were suitable in substance and presentation to overseas audiences.

The result of this process was the approval by the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) of the four Australian Standards for game, poultry, ratite and rabbit.

The amended Orders incorporate by reference the Australian Standards. The objective is that, as far as is possible, all food safety and wholesomeness requirements relevant to the production of game, poultry and rabbit meat and meat products for export will be contained within the Standards, leaving the Orders to largely deal specifically with the mechanics of export.

Identification of Options

Four options have been identified:

- Option 1 - Retain the status quo
- Option 2 - De-regulation (i.e. repeal the Orders)
- Option 3 – Rely on domestic legislation
- Option 4 - Amend the Orders in line with the stated objectives

Option 1: Retain the status quo

The current Orders contain detailed requirements on the export of game, poultry and rabbit meat and meat products, which include:

- Registered establishments
- Conditions or restrictions
- Application of official marks and other stamps
- Prescribed tag
- Sealing of cartons
- Sealing of means of transport, container unit systems, ships, establishment and samples
- Date marking
- Exotic disease
- Export certification and trade descriptions
- Ancillary meat inspection services

The Orders deliver a recognised system of inspection and certification that assists Australian exporters to gain access to markets with stringent food health and safety standards. The level of inspection and certification is tailored to meet the requirements of individual export markets.

This option, however, does not resolve the issue of interpretation of the continuing reference in the Orders to Exports (Meat) Control Regulations 1982.

Option 2: De-regulation – repeal the Orders

Under this option, the market would be left to develop and comply with self-regulatory arrangements.

The meat industry in Australia is a robust and progressive industry. The entire meat industry (both export and domestic) has adopted a uniform HACCP based approach to food safety and quality issues and is committed to an outcomes based regulatory framework.

All meat production for export is regulated through Commonwealth legislation which is currently administered by AQIS. Separate domestic meat safety legislation is also in place for each State/Territory and is enforced by the relevant State/Territory meat safety authorities. Whilst each State/Territory has different legislation, that legislation adopts nationally agreed Australian Standards for the hygienic production of meat and meat products. Australian Standards are now in place for red meat, poultry meat, game meat, ratite meat, crocodile meat and rabbit meat. Compliance with importing country requirements is addressed through the Commonwealth export legislation and is not covered by any domestic legislation or guidelines.

Under this option industry would inevitably use, as a basis for self-regulatory controls, proven aspects of the current legislative frameworks for the export of meat and meat products and the production of safe and wholesome game, poultry and rabbit meat and meat products.

Option 3: Rely on domestic legislation

Under this option, specific export legislation would not be required, as food that is eligible for sale in Australia (as defined by national standards such as the *Food Standards Code* and the Australian Meat Standards) would become eligible for export. This is consistent with the NCP recommendation for the adoption of an integrated Export Assurance System (three-tier model), with Australian Standards forming the first tier.

Option 4: Amend the Orders in line with the stated objectives

Amendment of the Orders should ensure the objectives are addressed in a systematic way, particularly with respect to the recommendations of the NCP review.

The objectives in amending the GPRMOs are to:

- ensure a sound legislative framework for approving the processing regimes for game, poultry and rabbit meat

- remove reference to the Exports (Meat) Regulations 1982 and recognise the relevant Australian Standards as the basis for operational food safety and wholesomeness controls in the game, poultry and rabbit meat industries in accordance with the recommendation of the NCP review of the *Export Control Act 1982*.

The Orders (as amended) have taken into account the recommendations of the NCP review. The Orders contain outcome-based requirements on conditions and restrictions on the export of meat and meat products, similar in general scope to the current Orders. However, they differ in terms of the degree of prescription and content.

The current Orders were drafted prior to the development of national standards for food safety and wholesomeness. The new Orders incorporate by reference the relevant Australian Standards.

Impact analysis

This regulation impact statement seeks to quantify, where possible, the costs and benefits of the proposed amendments. As well, qualitative costs and benefits are described.

There is limited available quantitative data on the current cost to industry of export game, poultry and rabbit meat regulation and the degree of benefit which may be expected as a result of amending the existing regulation. Where an indicative assessment can be made, it has been included in the analysis.

Importantly, the review is required to address recommendations of the NCP review and to ensure a sound legislative framework for approving the processing regimes for game, poultry and rabbit meat.

Parties affected by amendment to the regulation include:

- Industry
 - processors of game, poultry and rabbit meat and meat products for export
 - other sectors of the supply chain including storage establishments, wholesalers, freight forwarders, etc.
- Australia's trade partners and their consumers
- Government
 - AQIS
 - State and Territory service providers, such as State/Territory meat authorities
- Australian consumers

The value of total farm production of poultry for slaughter within Australia in 2002 - 2003 was \$1205.4 million. Poultry meat exports for the same period had a value of \$22 million⁶ while game meat exports approximated \$61 million.

Disruption to the game, poultry and rabbit meat industries would have a recognisable impact on the performance of the Australian economy, particularly for the rural and meat-processing sectors. The continued viability of these industries is dependent upon overseas consumer

⁶ ABARE op cit

confidence about the safety, wholesomeness and integrity of game, poultry and rabbit meat and meat products.

Option 1: Retain the status quo

Costs

The total annual cost to Government of administering and enforcing the current *Game, Poultry and Rabbit Meat Orders* is difficult to ascertain as this cost is included within the cost of the overall export meat regulatory program.

It is generally accepted by the NCP review, AQIS and industry that these Orders in their present form are not adequate.

In retaining the existing Orders, there is a potential cost to government as this option does not provide a specific legislative framework for approving the processing regimes for game, poultry and rabbit meat and does not meet the NCP review recommendations. Furthermore, this option does not give any long-term assurance of facilitating market access, as issues raised by trading partners (such as Canada with concerns over the legal underpinning of the Orders) and concern over a potential legal action involving the defacto application of the Export Meat Orders are not addressed. This is regarded as a high risk to Government, and hence a cost.

Quantifying the costs are difficult, as the potential consequences of not meeting importing country requirements varies from the cost to return the goods to Australia, to destruction costs, to loss of market for a particular good, entire commodity grouping, or in extreme cases the loss of market for other commodities as well. It is also a possibility that loss of market access into one country may result in other countries restricting access. It is known that the cost to Government of the possible legal action involving the defacto application of the Export Meat Orders to a game processing establishment could amount to \$2.2 million.

Option 1 does not address the objectives. Whilst trade is facilitated through this option, the impost on industry could be increased, potentially decreasing their competitiveness and access to markets. Therefore the direct cost to industry of this option is anticipated to be higher than for other options.

Benefits

There are minimal or no benefits to any of the stakeholder groups under this option.

Staying with the current system would obviate the cost to government of amending the Orders, although this is largely a one-off direct cost.

Summary

In summary, this option to continue with the current regulatory system:

- does not encourage business operators to have confidence in the application of the regulation

- does not provide Government with confidence in the application of the regulation
- does not support export initiatives for Australia to compete more effectively on world food markets
- does not address recommendations of the NCP review

Option 2: De- regulation – repeal the Orders

Costs

There is considerable cost associated with this option. Financial cost to industry would be high initially in order to develop self-regulatory arrangements. The ongoing financial cost of maintaining these arrangements would also be passed to industry. This option may also contribute to uncertainty about how to adhere to requirements, which would come at a cost.

An example of this type of arrangement, understood to exist in certain African states, is where government plays little role in export oversight and exports are solely facilitated on the basis of third party certification. This model relies upon third party certifiers strictly meeting importing country requirements and provides no opportunities for demonstration of equivalency, and hence little opportunities for maximising cost efficiencies. It provides a complex and costly environment for larger exporters who service a number of markets.

For Australia, this option does not provide any assurances of facilitating market access. It is highly unlikely that this option would be acceptable to the major trade partners, and hence is an enormous potential cost to industry and Government. Additionally, this option does not facilitate the issuance of certification by AQIS, which may result in loss in market confidence and subsequently market access.

Because of the significant cost to industry and the economy more generally a move to self-regulation, or quasi regulation cannot be justified. Additionally, importing countries have an expectation that government certification attesting to a food's fitness for human consumption is provided on the basis of a satisfactory regulatory regime and appropriate standards.

The NCP review considered this option in context of all exports, not just those regulated under the Orders, and reported that, generally, stakeholders recognised significant benefits of being regulated; however stakeholders felt that these benefits imposed significant costs. The NCP review concluded that legislation is necessary.

Benefits

The potential benefits of this option may include a reduction in compliance and input costs when dealing with less stringent markets. However, generally, the extent of any benefits under this option is dependent on the type of self-regulation implemented.

Summary

In summary, this option to repeal the Orders:

- does not provide any assurances of facilitating market access
- does not provide importing countries with confidence in the integrity of an export system

- does not support export initiatives for Australia to compete more effectively on world food markets

Option 3: Rely on domestic legislation

Costs

There are major costs to industry under this option.

The Australian Standards for the hygienic production of game, poultry and rabbit meat and *Food Standards Code* do not meet importing country requirements in a number of regards, as they do not currently have the scope to apply to exports and have not been developed to meet export needs. For example, they do not allow for importing country regulations to apply, whereas the Orders allow for differences in importing country requirements.

Quite a number of markets require additional conditions on the goods to be exported that cannot be covered under the Australian domestic regulations. Therefore reliance on domestic legislation may not provide AQIS the necessary assurances to facilitate the issuance of certification, which may result in loss in market confidence and subsequently market access.

The regulation of the production of export meat undergoes close scrutiny by countries that import that meat, and national domestic standards would have to be able to withstand overseas scrutiny to ensure ongoing market access. For example, the European Commission and the United States Department of Agriculture Food Safety Inspection Service conduct regular reviews of the operations of Australia's export registered meat establishments as well as the legislation that regulates the operations of those registered establishments. Other countries accept Australian products on the basis that the product is acceptable to the United States or the European Union. Consequently, a national standard that applies to export meat must be suitable for international audiences in substance and presentation, as well as being consistent with international standards as set by Codex.

This option does not provide any assurances of facilitating market access. It is highly unlikely that this option would be acceptable to some of our major trading partners. As noted above, the financial cost of loss of access to markets would be significant.

Benefits

Because this option eliminates a dual Commonwealth/State system, it presents numerous benefits to industry, potentially in reduced compliance and input costs and access into the export chain for the domestic industry in the event that importing countries were accepting of arrangements under this option. For Government, this option also presents benefits in terms of streamlining of functions, which would result in a reduction in direct costs.

Summary

In summary, this option to rely on domestic legislation:

- does not provide any assurances of facilitating market access
- does not support export initiatives for Australia to compete more effectively on world food markets

Option 4: Amend the Orders in line with the stated objectives

Costs

This option presents a one-off direct cost to Government in amending the Orders, however this cost is not significant and includes the dedication of staff to prepare the Orders and supporting material and progression of the amendments through the approval process.

There is no cost to industry under this option as industry is already administratively applying the relevant Australian Standards to gain AQIS approval of processing regimes.

Benefits

This option addresses the relevant recommendations of the NCP review and ensures a sound legislative framework for approving the processing regimes for game, poultry and rabbit meat.

The incorporation by reference of the Australian Standards for game, poultry and rabbit meat into the Orders is an important objective for stakeholders. This option presents significant benefits to industry and Government as there will be an increase in regulatory transparency and predictability.

Benefits to Government may include streamlined regulatory processes, greater harmonisation with other Australian legislation, reduced monitoring and enforcement costs and higher levels of compliance.

The benefits to industry include the development of a framework that is conducive to enhanced industry competitiveness and the potential for a reduction in regulatory burden.

The Standards are consistent with Codex which offers internationally accepted guidelines. Utilising national standards for the hygienic production of game, poultry and rabbit meat and meat products reduces the need for, and extent of, separate export legislation for food safety and wholesomeness, thus reducing regulatory burden and associated costs as well as increasing market options for individual processors. This principle underlies the recommendation of the NCP review. The review found that the existence of two sets of standards (export and domestic) was not consistent with competition principles and recommended that domestic and export standards be harmonised and consistent with relevant international standards. The report stated that “Australian industry should be encouraged to produce for a global market with health and hygiene and product standards built into production systems.”

Summary

In summary, this option to review the Orders in line with stated objectives:

- addresses the recommendations of the NCP review
- encourages business operators to have confidence in the application of the regulation
- provides Government with confidence in the application of the regulation
- supports export initiatives for Australia to compete more effectively on world food markets



RIS Summary

Option	Impact on		Likely benefit / comment
	Industry	Government	
1: Retain status quo	<ul style="list-style-type: none"> • Relying on administrative application of Standards for approvals • Reduction in industry confidence • Potential decrease in access to markets 	<ul style="list-style-type: none"> • Does not ensure a sound legislative framework • Does not meet NCP review recommendations • Potential threat to market access longer term 	This option does not address the objectives. It does not provide any long-term assurance of facilitating market access. It provides reduced opportunity for export/domestic standards harmonisation and does not improve industry competitiveness. The cost to industry in direct costs is high.
2: De-regulation – repeal the Orders	<ul style="list-style-type: none"> • Initial and on-going financial cost to industry to develop & comply with arrangements • May contribute to uncertainty • Highly unlikely to facilitate trade • May reduce market confidence & hence market access • May reduce compliance & input costs 	<ul style="list-style-type: none"> • Highly unlikely to facilitate trade • Does not facilitate issuance of certification • Reduced enforcement costs 	Whilst this option may appear to reduce direct costs to industry, it does not meet the objectives and hence would have high indirect costs. It would not facilitate market access, reduces opportunities for a partnership approach between industry and government and would not support a sound enforcement and compliance system.



Australian Government

Australian Quarantine and Inspection Service

3: Rely on domestic legislation	<ul style="list-style-type: none"> • May reduce compliance & input costs • May provide access into the export chain for the domestic industry • Highly unlikely to facilitate trade • May reduce market confidence & hence market access 	<ul style="list-style-type: none"> • May streamline government functions • Highly unlikely to facilitate trade • Does not facilitate issuance of certification 	<p>Whilst this option may appear to reduce direct costs to industry, it does not meet the objectives and hence would have high indirect costs. It would not facilitate market access, would not provide for an adequate export product integrity system, provides no opportunity for standards harmonisation and is unlikely to improve industry competitiveness.</p>
4: Review the Orders in line with the stated objectives	<ul style="list-style-type: none"> • Will increase regulatory transparency & predictability • Confidence in regulatory framework • Confidence in maintaining market access 	<ul style="list-style-type: none"> • One-off cost to review & implement • May streamline the regulatory process • Improves harmonisation with other legislation • Meets NCP recommendations 	<p>Meets all objectives.</p>

Consultation

AQIS has established close linkages with the peak bodies and industry sectors operating under the Orders. Feedback from these groups has indicated that they support the revision of the Orders in line with the stated objectives.

AQIS convenes a range of consultative committees as the principal advisory forums for consultation with industry on certification, market access issues and quarantine matters. The peak industry bodies nominate industry representatives to their respective committees. The consultative committees for the game, poultry and rabbit meat and meat products industries have been convened by AQIS in various forms since 1984.

Generally, stakeholders were of the view that it was essential to provide a sound legislative framework for approving the processing regimes for game, poultry and rabbit meat, to ensure confidence in their products on both domestic and export markets. There were no dissenting views to this from the peak industry bodies representing each sector. These are:

Kangaroo Industry Association of Australia
Australian Game Meat Producers Association
Australian Ostrich Association
Emu Farmers Federation of Australia
Australian Poultry Industry Association

Note that there is no export rabbit meat industry at the present time and therefore no industry body representing it.

Conclusion and recommended option

Consistent with the recommendations of the NCP review, there is general agreement amongst stakeholders that a review and amendment of the current export regulations for game, poultry and rabbit meat and meat products is necessary to provide a sound legislative framework. Accordingly, Government initiated the review.

Four options have been considered:

- Maintaining the status quo (Option 1) is potentially costly for industry and Government, does not provide any long-term assurances of facilitating market access and does not meet the objectives.
- Repealing the Orders (Option 2) and relying on industry to develop self-regulatory arrangements may result in a decrease in direct costs to industry, but it does not meet the objectives and is highly unlikely to facilitate trade.
- Reliance on domestic legislation (Option 3) may also reduce direct costs to industry, but again this option does not meet the objectives and is highly unlikely to facilitate trade.

- Amendment of the Orders in line with the stated objectives (Option 4) has significant on-going benefits to Government and industry. This option is considered to meet all of the stated objectives and therefore is the preferred option.

Implementation and review

AQIS currently administers the *Game, Poultry and Rabbit Meat Orders*, and would continue to do so after their amendment. AQIS is proposing an implementation date of February 2005 for the amended Orders, which is agreeable to stakeholders.

Because industry is currently administratively applying the Australian Standards for game, poultry and rabbit meat to gain AQIS approval for the processing regimes for those products, there are no issues of implementation in relation to those processing regimes.

An important facet of implementation of the amended Orders is enforcement and compliance. The amended Orders perpetuate the philosophy that AQIS, as the regulating authority, has the role of auditor and certifier rather than “policeman”. Compared to the traditional inspection regime, the continued enhancement of the approval arrangement model provides an environment for stricter controls through continual monitoring, audit and evaluation. These systems encourage companies to improve processes continually, rather than the historic culture of doing the minimum to achieve compliance under an inspection-based system.

Non-compliance, or the potential for non-compliance, is an ever-present threat and mechanisms exist to ensure compliance and to stop acts of non-compliance. These take the form of sanctions – punitive and operational. Punitive sanctions can result in jail or court imposed fines as provided for in the legislation. Operational sanctions (eg. higher level of audit, incurring extra audits, incurring costs for rectification or removal of the ability to operate in the industry) can be a much greater deterrent to non-compliance than the threat of punitive action. They are also generally more effective as they can be imposed administratively, applied promptly and targeted to encourage compliant behaviour. As an example, suspending operations of registered premises is a severe financial imposition as the business is unable to operate during that period. Importing countries usually expect effective sanctions to be built into legislative arrangements which underpin export certification.

The amended Orders continue to promote the concept of co-regulation which fosters greater industry responsibility and creates opportunities for a more compliant industry.

Attachment 1 – NCP Committee Recommendations

The NCP review committee made the following recommendations:

1. Retention of the Act
 - 1.1 The Export Control Act be retained, in its current form, and with its current general structure,
 - 1.2 The title of the Act be changed to the ‘Export Assurance Act’,
 - 1.3 Specific amendments be made in the areas of:
 - the objectives of the Act;
 - the scope of the legislation;
 - adoption of a three-tier system of export assurance; and
 - legislative monitoring, as outlined in other recommendations.
2. Objectives of the legislation – Committee recommended that the Act be amended to include a statement of specific objectives. The Committee recommended the following objectives:

The objective of future export control legislation is to facilitate, enhance and sustain Australia’s exports by providing authority for the imposition of systems which:

 - ensure compliance with overseas country requirements, and
 - ensure compliance with any other standards established through government/industry consultation on the basis of net public benefit.
3. Adoption of an integrated Export Assurance System (three-tier model) - Committee recommended that programs established under the Export Control Act be administered under the following three-tier model comprising:
 - Australian Standards (Tier 1)
 - Standards set by overseas governments for access to their markets (Tier 2)
 - Market-specific requirements (Tier 3).
4. Harmonisation of domestic and export standards – Committee recommended that domestic and export standards for the production of food and agricultural products in Australia be harmonised, and that they be consistent with relevant international standards.
5. Certification by a single Authority – Committee recommended that certification of Australia export products continue to be administered by a single government-based agency
6. Contestability of monitoring, auditing and inspection – Committee recommended that monitoring and inspection arrangements be made fully contestable under all programs as soon as third party arrangements are acceptable to overseas governments.
7. Scope of the legislation – Committee recommended that the focus of the Act extend through the entire food chain and not rely primarily on the product preparation stages immediately prior to export, as occurs at present.

8. Criteria for application of legislation – Committee recommended that specific criteria for the application of the Act be prepared in consultation with industry.
9. Certification for non-prescribed goods – Committee recommended that only prescribed goods be certified under the Act.
10. Review of individual Programs against NCP principles – Committee recommended that the Quarantine and Export Advisory Committee (QEAC) establish a program of periodic monitoring of the operation of regulation, particularly in economic terms, ensuring that:
 - the activity under the Act and its administration are measurable against its objectives,
 - the Act be periodically monitored in relation to the net benefit it confers.
11. Accelerate the current review of existing subordinate legislation – Committee recommended that the current review of subordinate legislation should be accelerated and conducted with reference to the principles expressed in this report, in particular, reflecting the partnership between government and industry and the assumption of greater industry responsibility.
12. Co-responsibility for strategy and program delivery – Committee recommended that:
 - 12.1 a Development Committee be established for each program;
 - 12.2 membership of the committee comprises representatives of AQIS and industry;
 - 12.3 the Committees operate independently and be charged with the specific responsibility to:
 - determine strategies,
 - establish priorities, and
 - establish plans for their implementation;
 - 12.4 QEAC review the performance of these committees biennially and report to the Minister against the adopted plans.
13. Electronic commerce – Committee recommended that AQIS move quickly to align the administration of the regulation with current Government policy on electronic commerce.
14. Implementation – Committee recommended that the outcome of this Review and its recommendations be included as part of the COAG policy on the reform of food regulation.