



4 June 2008

Mr Roger Beale AO  
Chair  
Quarantine and Biosecurity Review Panel  
GPO Box 858  
CANBERRA ACT 2601

Dear Mr Beale,

### **Quarantine and Bio-security Review**

On behalf of the NSW Food Authority I welcome this opportunity to submit our views on policy, regulatory and practical aspects of Australia's Quarantine and Bio-security system. In particular this submission relates to the role of the Australian Quarantine and Inspection Service (AQIS) within the Australian food regulatory sector.

The NSW Food Authority is a State Government agency established in April 2004 to provide New South Wales with the first integrated food regulation system in Australia. The Food Authority was formed by merging SafeFood NSW with the food regulatory activities of NSW Health. As Australia's first completely integrated or "through-chain" food regulation agency, the NSW Food Authority is responsible for food safety across the entire food industry, from primary production to point-of-sale.

Before the Authority was established, responsibility for food regulation in NSW was divided across a number of State agencies. The establishment of the NSW Food Authority created a more streamlined, consistent and efficient approach to food regulation in NSW and a single point of contact for both the industry and public.

#### **Risk across the quarantine and bio-security continuum**

##### *Adequacy of auditing and verification of pre-border, border and post-border measures*

The Authority is concerned that there is limited resources and minimal activity by AQIS to audit and verify businesses importing food into Australia. Many international food businesses are importing food into domestic markets with or without any quality systems in place and no verification of this system by AQIS in those countries as the appropriate agency. Whilst Australian exporters are subject to ever increasing importing country reviews of their systems there appears to be a substantial imbalance in the level of scrutiny applied to importers to Australia with many examples of product imported which has been poorly processed or not meeting standards (arsenic in seaweed, illegal additives in soya sauce, histamine in imported fish, hepatitis A in cooked prawns, norovirus in imported oyster meat, listeria in imported ham). Auditing and verification of importing country food safety systems is seen as a area where AQIS could play an enhanced role.

It could be viewed that the current separation of functions between AQIS and Biosecurity Australia has relegated imported food inspection to a secondary role. Imported food screening by AQIS is inadequate. Products are being released into the NSW marketplace not in compliance with the Food Standards Code. Labelling is a serious concern. AQIS is unable to

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adequately identify different categories/types of foods coming into the country apparently due to the self categorisation of food types by importers and "database" issues. This presents a potential risk to public health where agencies are attempting to identify importers or distributors of imported product which may have been required to be withdrawn from sale. This was evidenced earlier this year with a public health issue concerning imported cassava chips.

Foods tested by AQIS upon entry are often released into the NSW marketplace before results are available. When testing results reveal non-compliance the recall of these products is then left to the NSW enforcement agency with little or no AQIS field involvement in tracing and recall.

Monitoring and surveillance is essential for any food regulatory agency in delivering its remit. In NSW, the monitoring and surveillance of food has both a laboratory component for the analysis of food and an inspection component for businesses located in NSW. In recognising that resources (human and financial) are finite, the NSW Food Authority has adopted a prioritised monitoring and surveillance approach based on risk. While imported foods are not specifically targeted they are included in the approach. Enforcement actions are taken in the case of non-compliance with the Food Standards Code and details of any non-compliant imported product are provided to AQIS for the purpose of strengthening pre-border monitoring and surveillance.

Strengthening border and pre-border monitoring and surveillance of imported product is a preferred approach to post-border activities. The recall of non-compliant product in the market is costly for both government and business.

### **Culture, efficiency and resourcing**

#### *Cost recovery, Export certification processes and arrangements*

In terms of funding arrangements, while NSWFA cannot comment directly, the food safety funding principles established in 2001 following a review by the Hon John Kerin AM may offer useful options for consideration. The principles provide for shared funding by industry and government based on analysis of agency activities and application of a range of policy considerations. In particular, the Review considered that government funding may be appropriate where one or more of the following circumstances apply:

1. The activities are undertaken for government;
2. Independence of the regulator is a paramount concern;
3. The activity is necessary to prevent information failure; and/or
4. Positive externalities are evident and the benefits extend to the wider community

28 activities were identified and grouped into four activity categories, namely Policy and Standard Setting, Scheme Implementation and Compliance, Enforcement, and Overheads. The Review recommended that government funding be provided for most activities in the Policy and Standard Setting and Enforcement categories. Cost recovery for activities in the Scheme Implementation and Compliance categories was considered appropriate. It was recommended that Overheads be jointly funded by government and industry in proportion to their respective funding shares for the other three categories.

It may be particularly relevant for AQIS that this approach provides for cost recovery in relation to routine audit and inspection activities, while activities such as investigations and incident response, recalls and prosecutions were seen as "policing" functions which ought be government funded to ensure independence and avoid undue industry influence. The NSW Government accepted all of Kerin's recommendations and these principles still underpin the funding of the NSW Food Authority. The Kerin report can be accessed via the link below.

<http://www.foodauthority.nsw.gov.au/pdf/Kerin%20Final%20Report%20Funding.pdf>

In respect of export certification responsibilities NSW Food Authority sees this as a primary responsibility of AQIS. As a result NSW has an agreement whereby all export certification is undertaken by AQIS even for food businesses not directly covered by AQIS legislation (i.e. non prescribed goods). Furthermore the NSW Food Authority recognises that AQIS has an excellent reputation with overseas markets in respect of certification. The following comments are intended not be overt criticism of AQIS but identification of current impediments to a co-regulatory approach for Australian businesses.

However there exists substantial regulatory burden and inequity in industries directly covered by AQIS legislation (prescribed goods). AQIS has not recognised advancements in the Australian food safety system particularly with the move by domestic regulators to outcome based standards underpinned by science based analysis of hazards. There is still over reliance on largely prescriptive legislation to regulate the export industries specifically meat, dairy and seafood sectors. Even within these three sectors there is substantial differences in the level of regulatory burden placed on businesses wishing to export by AQIS requirements. The NSW Food Authority views that there has been a general reluctance by AQIS and the Commonwealth to fully implement the 2000 Frawley report recommendations which supported that the starting point for export certification should be compliance with domestic standards, not a additional separate "export" standard.

This non recognition of the domestic system has resulted in Australian food businesses having to comply with stringent export requirements which are generally the EU or US importing standards. This standard even applies to businesses wishing to export to countries that have food safety standards below the Australian domestic system. More effort is required by AQIS to promote and support the Australian domestic regulatory system to export customers with a need to shift the regulatory focus from the "product" to the overall system.

The reluctance by AQIS to recognise the Australian domestic regulatory system has been disadvantageous to the concept of harmonised standards and mutual recognition. This has been evidenced by a decline in AQIS participation in developing domestic standards over time and little participation in processes such as ISC with domestic regulators. The NSW Food Authority remains hopeful that these issues can be resolved.

Thank you for the opportunity to participate in this review and the Authority is more than willing to discuss any aspect of this submission in more detail if required.

Yours Sincerely,



George Davey  
**Director General**  
**NSW Food Authority**

