Senate Rural and Regional Affairs and Transport References Committee

REVIEW OF CITRUS INDUSTRY IN AUSTRALIA

Index of Documents Tabled at Mildura Hearing
Thursday, 4 July 2013

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Provided by Peter Walker
(Tabled 4/7) 4/7

KEY ISSUES RELATED TO THE DEED OF AGREEMENT BETWEEN HAL AND COMMONWEALTH

Overall the main concern is that there is inadequate guidance by the Federal Government created by the *Deed of Agreement between the Commonwealth and Horticultural Australia* and the Ministerial *Guidelines on Funding of Consultation Costs by Primary Industry and Energy Portfolio Statutory Authorities.*

The Deed allows HAL to manage its relationships with Industry Representative Bodies IRB (like CA) how it feels fit. There is no limit on the amount of funding or scope of funding allocated to IRB's

In schedule 4 of the Deed of Agreement covering consultation funding there are few restrictions on conditions for funding consultation and exactly what is covered. In the introduction its says that HAL may make payments to Peak Industry Bodies (PIB) at the discretion of the HAL Board subject to guidelines that appear in Schedule 4

The only restrictions are as follows:

HAL may not make payments to a PIB for the specific purpose of, or as a contribution to:

(a) Agri-political Activity;

(b) sitting fees;

(c) salaries and running costs of the PIB other than those directly attributable to consultations with the HAL and the PIB constituency on matters which it is progressing with HAL; or

(d) capital expenditure.

In section 4 of schedule 4 it says (b) the board has the flexibility to vary its budget for consultation taking into account changing circumstances provided they are accounted in the HAL annual report and (c) the level of funding to be provided to a PIB and the type of cost to be reimbursed is at the discretion of the HAL Board.

It is interesting to note in 3(a), 3(b) and 4 (5) in schedule 4 talks about reporting practices related to improving transparency however when you go to the HAL Annual Operational Plan and HAL Annual Report the level of detail suggested in the schedule is not present. In the case of citrus all that can be determined from these reports is that $159,470 was used by CA for "consulting purposes". In the HAL Citrus Annual report for 2011/2012 under the partnership agreement and consultation funding section its says that the $159,479 for CA consultation was to undertake Annual levy payers Meetings, IAC Meetings, Attend HAL forums, and other consultation between HAL and CA. This represents 4.57% of the citrus R & D levy.

(Note as a recap in the case of Citrus Australia according to the 2011/2012 CA Annual report their total revenue was $2,790,669. Operational grants and income was $2,073,480 and $440,628 for *project income).*

With respect to the other elements of the Deed I have picked out the main sections for comment making the following points:

Section 3 Constitution

Section 3.1 states that:

HAL must:

(a) consult with the Commonwealth on proposed changes to its Constitution to ensure that it remains appropriate to a body performing the functions of the Industry Services Body or the Industry Export Control Body.

Note: Under section 10(2)(c) of the Act the Minister may declare that HAL ceases to be the Industry Services Body if he considers that the HAL Constitution is no longer appropriate for an Industry Services Body.

This section raises the point about the suitability of the HAL structure to effectively represent horticultural stakeholders when their structure is by membership from Peak Industry Bodies who themselves may or may not represent stakeholders effectively.

Section 7 Application of the Fund

Under section 7 of the Deed HAL can apply funds as follows providing an enormous amount of latitude.

7.2 HAL shall apply the Funds during a particular period only in a manner that is consistent with:

(a) the HAL Strategic Plan;

(b) the HAL Annual Operational Plan; and

(c) the Guidelines

and must apply the Funds in a manner that is efficient, effective and ethical.

However 7.3 allows the Commonwealth the ability to alter the guidelines provided sufficient consultation occurs with HAL and time to adjust.

Section 7.4 in the Deed covers examples of Eligible R & D expenditure which are extremely broad with 7.4 (n) covering

(n) engaging directors, employees, consultants and agents of HAL, meeting administration, operating or capital expenses (including, but not limited to, lease costs and legal and other professional expenses) reasonably necessary or appropriate to be incurred by HAL to support its activities in relation to paragraphs (a) to (m).

It's interesting to note that 7.4 (i) includes:

(i) improving the accountability for expenditure on Research and Development activities in relation to the horticulture industry;

There is little in the recent behaviour of HAL to suggest that they are taking this section seriously, however in the latest HAL annual report there is a considerable amount of discussion about the conflict of interest issues related to CA and Avocado PIB's and how HAL are addressing this. (let me know if you want a copy of the report).

Section 8 Suspension or Termination of Funds Payments

This section provides the Commonwealth with the ability to terminate the Deed or payments if funds are not applied consistent to the HAL Strategic Plan, Operational Plan and Guidelines. Given the broad nature of the HAL plan and lose content of the guideline this power is unlikely to be used and or could be challenged by HAL.

Section 10 Access to Records and use of information

Under section 10 of the Deed there are a number of requirements to ensure that the Commonwealth, Auditor General or authorised representative has access to HAL premise, data, records, accounts to ensure compliance with the Deed.

I believe there should be some agreement or requirement that causes HAL to act like other peak Rural R & D providers (e.g. Grape and Wine Research and development Corporation) who have dedicated FOI officers and requirements therefore allowing total transparency in the organization. As noted in the response from the parliamentary library it could be argued that HAL is an agency for the purpose of the FOI Act and this should be picked up in the Deed.

Section 11 Strategic and Annual Operational Plan

Under section 11 of the Deed it covers agreements in respect to the Strategic Plan and Annual Operational Plan. Section 11.3 specifically says:

In developing the strategic plan HAL must:

(a) ensure that there is effective consultation with levy payers and that their priorities are reflected in the strategic plan;

(b) hold formal consultations to seek input from industry representative bodies;

(c) consult with the Minister; and

(d) comply with the Guidelines.

As identified previously given how the membership of HAL is structure I believe that HAL is not effectively consulting with its levy payers. This includes the 87% of growers who are not CA members. Because all HAL communication is directly with the PIB's this limits effective consultation and brings into question the total suitability of the HAL structure. With other peak Rural R & D organizations, membership is held by all growers / farmers who contribute funds under compulsory levies.

Conclusion

- Given the structure of HAL there are questions as to the suitability of this organization to act as an appropriate R & D provider to the Horticultural Industry.
- The application of funds by HAL under the Deed are too broad and allow the use of R & D funds in areas of consultation which ultimately support running costs of PIB's.
- Consistent with 7.3 the Commonwealth Government should be looking at tightening the funding guidelines to address industry concerns.
- While the Deed contains requirements for good reporting practice most relates to reporting back to the Commonwealth. The Deed does not sufficiently cover the needs of stakeholders to have access to clear financial information.
- There should be a requirement to capture HAL under the FOI Act similar to other Rural R & D providers.

② DAFF WEB SITE

Investigation of claims of a conflict-of-interest affecting the advice offered to Horticulture Australia Ltd by its Citrus and Avocado Industry Advisory Committees

Introduction

The Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joe Ludwig, received representations from within the citrus industry (4 January 2012) and avocado industry (6 February 2012) complaining that poor governance was affecting the operation of Horticulture Australia Limited's (HAL) citrus and avocado industry advisory committees (IACs).

- IACs are subcommittees of the HAL Board, established for each industry under HAL's Constitution to advise it on the allocation of project funding and manage the development of strategic and annual investment plans.

In summary, the complaints were:

- some peak industry bodies (PIBs) have increasingly taken on roles as development, extension and marketing service providers, funded with industry levies through HAL. As a result, those IACs that are largely composed of PIB directors have a greater potential for conflict-of-interest when advising HAL on the allocation of levy funding;
- the advice offered by some IACs to HAL is influenced by industry agri-politics; and
- some IACs lack members with adequate scientific or board directorship skills, and as a result are poorly positioned to advise HAL on the allocation of funding.

The Minister directed the complaints to DAFF for investigation. DAFF contacted the citrus and avocado industry complainants to better understand the claims made in their representations. DAFF also agreed an approach for the investigation with the HAL Board and senior management.

Citrus and avocado IAC investigations

HAL investigated the claims about the operation of the citrus and avocado IACs and reported its findings to DAFF on 5 April 2012. HAL's report confirmed that, in respect to the citrus IAC:

- Of the citrus IAC's nine members, seven were board members of Citrus Australia Limited (CAL) while two were independent members.
- On the advice of the citrus IAC, HAL awarded CAL $1.371 million of $1.657 million of available levy funds (83 per cent) in 2010-11 and $272,000 of $602,000 (45 per cent) in 2011-12.
- Project funding allocated to CAL by HAL was non-contestable.

On 11 February 2013 HAL provided DAFF with the final 2011–12 citrus program expenditure figures. These data showed that CAL received $1.475–million of HAL's$2.921 million citrus levy investment program (50.5 percent) in 2011 –12.

In respect of the avocado IAC, HAL's report confirmed that, on the advice of the IAC, HAL had awarded the Avocado Export Company $490,000 in project funding since 2010. The Avocado Export Company had three company directors who were also members of the avocado IAC and directors of Avocados Australia Limited (AAL). HAL's annual reports show that the avocado industry research and development projects totalled $6.4 million for the years 2010–11 and 2011–12.

HAL also reported poor record-keeping practices by the avocado and citrus IAC secretariats, which impeded HAL's analysis of the IAC's actions and decisions.

In May 2012, HAL advised DAFF of a number of preliminary actions it would take to address the findings of the investigation. These actions included:

- Reconstituting the citrus and avocado IACs to comprise a majority of members that are not PIB directors, executive officers or employees.
- Facilitating a meeting of key citrus industry stakeholders to discuss the IAC's operations.
- An increased level of reporting to levy payers at the next annual citrus industry levy payers meeting.
- A detailed review of past expenditure from the avocado program.
- An independent appraisal of the current avocado marketing program to redress any imbalance between growing regions.

These actions are interim measures only. More significant solutions are being discussed which would apply consistently across all HAL's IACs, including the citrus and avocado IACs (discussed in the next section, below).

On 2 July 2012 Minister Ludwig wrote to the citrus and avocado industry complainants, summarising the findings of the investigation and the actions that HAL would take to address the findings.
HAL is currently implementing the agreed actions to improve the governance of the citrus and avocado IACs.

On 31 August 2012 the new membership of the citrus IAC was announced. There are nine members, six of whom are not PIB directors, executive officers or employees of CAL.

The new IAC was selected following a thorough and open selection process using a documented methodology, which included advertising for expressions of interest in the press in major citrus growing regions. All applications were then provided to an independent recruitment agency for review and considered by a three person selection panel constituting representatives from the HAL Board, HAL management and CAL.

The changes to the composition of the IAC are a first step. In the future, HAL will engage broadly with the citrus industry on the appropriate advisory mechanism for the investment of the citrus levy.

Governance arrangements for all IACs

Discussions are continuing between DAFF and HAL on improved governance arrangements for all of HAL's IACs, to avoid possible or perceived conflicts-of-interest.

There are a range of initiatives being discussed which aim to ensure greater contestability in the allocation of funding and improved arrangements for the composition and function of IACs.
HAL is engaging with its members to resolve the complaints and strengthen IAC governance arrangements.

On 26 November 2012 HAL informed DAFF that independent governance advisers would be appointed to its IACs. On 6 February 2013 HAL informed DAFF that independent governance advisers had been appointed to a number of IACs, including the avocado and citrus IACs.

Mr Colin Neave
Commonwealth Ombudsman.
GPO Box 442
Canberra ACT 2601.

Dear Mr Colin Neave.
Please accept this as our request for you to investigate matters relating to that section of the Department of Agriculture, Fisheries and Forestry under the Directorship of

In November 2012 we received a letter from (copy attached) informing us that our annual export registration fee was being increased from $550 per year to $8,530 per year!

Neither we nor other similar sized local businesses we spoke to had previously received the INDUSTRY ADVICE NOTICE 2012/25 in June 2012 outlining the proposed changes to horticulture export fees and charges as was later suggested by.

Our concerns are the apparent failure of that department to comply with its defined duties required to economically justify its Full Cost Recovery Program. Also its proffering of dishonest representations used to falsely justify excessive and inequitable increases to export registration fees for small horticultural businesses. And the department's supplying of misleading information related to these matters to Minister Ludwig.

My concerns are also that by the department's own admissions much of its Cost recovery Program is based on imposing an export registration fee structure designed to force up to 20% of all horticulture exporting businesses out of business or restricting them to dealing with larger corporations which will make that part of their activities unviable. We believe that as well as the unconscionable aspects of such action it also amounts to anti competitive behaviour.

In pursuit of this departmental objective we believe evidence clearly indicates that, among other things, the department has dishonestly evaded its duty to consult with small business by soliciting and uncritically accepting only the self serving inputs and interests of large businesses or their industry groups via their flawed submissions to the Joint AQIS – Horticulture industry Ministerial Taskforce.

On these matters we have variously written to, complained to Minister Joe Ludwig in writing and had Senator Nick Xenophon ask the Minister questions in Parliament. Unfortunately but not surprisingly the Minister does not appear to have been provided with information by his department for his answers to be...relevant. We have also written to SA Senator Anne Ruston and Hon. Bob Katter Member for Kennedy, among others. All of the people we have contacted believe that our complaint is fully justified and that the manner in which the Dept. has conducted itself demands close inspection. Please find attached copies of those letters mentioned.

Rather than living in a system of rule by law I can't escape the feeling that I am facing the extortions of a thug based protection racket. Such abuse of power does not encourage civil society.

OVERVEIW

The overall lime market in Australia is very small compared to other citrus fruits and Mystere Orchards is a small single family business. Non-the less it is one of the largest lime producers in South Australia and it was us who personally initiated the first SA lime exports to New Zealand.

Even though we might only export 6-10 pallets of fruit to New Zealand over just a few weeks per year it is an essential component in making the whole business economically viable.

Because of the very high quality of our product we are able to satisfy small niche markets which non-the less provide wider market appreciation of Australian products in general. Even though we may be a small family business there are many similar small businesses constituting a clearly identifiable "INDUSTRY GROUP" even without having any formal organisation. Similar circumstances are common across all Australian farm industries.

We clean sort and pack our limes ready for export at our own facility. Because of this we require an EXPORT REGISTRATION. This registration requires a fitness for purpose shed inspection as well as a general audit from a Department of Agriculture, Fisheries and Forestry inspector. If one includes the maximum possible travelling time, the total time the inspector would spend on travel and inspection of our facility is *less than two hours!* For this inspection we have previously been charged $550. The department now intends to charge us $8,530. for exactly the same two hour inspection and audit service. That is self evidently INEQUITABLE for such a service for such a small business.

As in the past, after we have packed our fruit ready for export we send it to our shipping agent in Brisbane where the fruit itself is inspected by the Dept. and the agent is charge an hourly rate fee for that service which is , quite reasonably, passed on to us. The shipping agent is also required to pay for an identical EXPORT REGISTRATION FEE as us, which of course is distributed equitably to his many customers.

In his answers to Senator Xenophon, Minister Ludwig mentioned "$6.5 million in transitional assistance," supposedly …"for small exporters", neither I nor other similar businesses I know have asked for or received any such assistance.

In the department's "INDUSTRY ADVICE NOTICE No.2012/25" they purport that there are currently various rebates titled "Transitional Support". There can be little doubt that there are no such "rebates" but merely the deceitfully renamed part of the department's normal annual budget allocation from Treasury which has not yet been fully recovered under their proposed Full Cost Recovery Program. Therefore, just for interest sake, what auditing duties must be followed by departments in renaming their Treasury budget allocations?

STAKEHOLDER CONSULTATION

Quite contrary to the assertion by the department's INDUSTRY ADVICE NOTICE 2012/25 that these changes will be *"developed using objective data;"* it, and the COST RECOVERY IMPACT STATEMENT, ,clearly and ironically shows the dysfunctional and deceitful basis of the changes to horticulture export fees and charges.

it is stated in the COST RECOVERY IMPACT STATEMENT that, "*The new fees and charges have been subject to an extensive process of consultation."* That is a falsehood.
There can be little doubt that the whole basis of the department's new cost recovery policy is founded on the deliberate exclusion of the interests of stakeholders such as Mystere Orchards and similar small businesses contrary to its defined duties.

I have never been consulted on these matters and I am unaware of any other local similar sized niche producers of high quality export fruit who have been consulted directly by representatives of the department or the various industry group representatives providing input to the Joint AQIS – Horticulture Industry Ministerial Task Force.

A particularly blatant example of how contrived has been the exclusion of any consultation of small business is in the behaviour of Citrus Australia and the SA Citrus Industry Development Board while they were sitting on the Joint AQIS- Horticulture Industry Ministerial Task Force.

Despite Citrus Australia sitting on the MINISTERIAL TASK FORCE for nearly 3 years;
Despite the fact that the Citrus Australia named representative to the MTF lives on the same road as Mystere Orchards, in Cooltong;
Despite the Citrus Australia representative to the MTF knowing that Mystere Orchards is one of the largest local lime producers and exporter;
Despite the fact that in past years I was selected to accompany this same person, (among others) on two separate trips to various countries in Asia, and the USA to help develop SA citrus industry marketing opportunities;

Despite all of these things, neither Citrus Australia nor their named representative to the MTF has made any attempt to consult with Mystere Orchards on these matters or to advise me that such processes were taking place.

Similarly, in regard to one of the SA Citrus Industry Development Board's representatives to the MTF, in past years I was selected to accompany that person on a trip to the USA to help develop SA citrus industry opportunities and yet neither he nor any-one from that organisation has made any effort to consult with me on these matters or advise me that such things were taking place.

As a well known and active member of the SA citrus industry I have also had much previous contact with the other SA Citrus Industry Development Board's representative to the MTF and yet he has made no effort to consult with me on these matters.

It is difficult to escape the conclusion that the advice provided by Citrus Australia and the SA Citrus industry Development Board to the Minister, and the department was little more than contrived deceit through omission. Or that such base tactics were common to submissions to the MTF in general.

Therefore, since the BEAL REPORT recommends that, *"Business groups should be consulted in developing cost recovery arrangements,"* and since the department's own document states that it ***"must comply"*** with that particular BEAL REPORT recommendation, it seems clear to me that it department has not complied with it's duty in this matter.

Similarly, with regard to the "AUSTRALIAN GOVERNMENT COST RECOVERY GUIDELINES 2005", the department **"must comply"** with its requirements to consult with, **"industry and small business"** and yet it seems clear to me that it has not done so.

It also is difficult to escape the question as to whether there was any collusion from the department in this selective exclusion of small industry inputs to the Ministerial Task Force.

While they may delegate a range of functions supporting them in the fulfilling of their duties it is not the legal prerogative of any-one in that department, or any party, to argue that they are absolved from their duties by purporting to delegate that *duty* to someone else. They may not plead mitigation in failure of their duties for such reasons either.

Nor does any other person have the prerogative of entertaining such arguments or pleadings by them.

With enough irony to choke a horse, Citrus Australia released a statement, (5-2-13), regarding the new fees which, with a slightly desperate air about it, states, "This is not an attempt to try and consolidate or force small business out"… Ha!

That statement is entirely contrary to the truth contained in a statement saying the exact opposite which is one of the main findings in the COST RECOVERY IMPACT STATEMENT for the HORTICULTURE EXPORT PROGRAM, which Citrus Australia's inputs helped create and which it has vigorously supported.

Considering the possibility that Citrus Australia may have put forward false representations to the MTF, as purported consultations with, and on behalf of, local small businesses such as described, is it possible that it may be in breach of it's duties under the Trade Practices Act, Sec. 53,(d), (False Representations)?

In the circumstances described above I find it difficult to believe that the SA Citrus Industry Development Board has not made statements to the MTF that are **"false or misleading in a material particular (whether by reason of the inclusion or omission of a particular)…"** and so, in breach of its duties under SEC. 22 of the (SA) Citrus Industry Act 2005. (False or misleading information.)

Just as a matter of interest, is it an offence or contempt of Parliament to mislead a Minister as a participant of a Ministerial Task Force or can anyone dish up any self-serving rubbish they like?

EFFICIENCIES and EQUITABLE DISTRIBUTION OF COSTS

As with the misrepresentations regarding "stakeholder consultation", the whole foundation of the department's propositions about achieving savings through increased efficiencies is false and is based entirely upon the exclusion from it's considerations of concerns from sections of the industry which it is duty bound to include.

Firstly is the department's establishment of a 3 tiered system of payments for the **'Registered Establishment Charge",** and the contention that this structure addresses the only relevant "differentiation" of businesses paying this charge.

That is a falsehood, the most relevant differentiation between businesses paying this charge **is the range of different sizes of businesses within each tier**.

I note in the COST RECOVERY IMPACT STATEMENT the department's feeble attempt to mask the range of different sizes within the export tier by purporting to average the requirements of service documentation and inspection hours of that tier. Any simplistic averaging in *any* study of so few groups which vary from one another by hundreds-fold, is statistically and analytically meaningless and can only be born of unprofessional ignorance or dishonest intent.

Similarly the department's repeated assertion that equitable distribution of costs is in anyway achieved by a single registration fee across companies which are different in size by hundreds-fold is nothing but a transparent dishonesty.

As in my case, and in similar other cases, the department inspectors visit my establishment once per year, and including the time for their return journey, and their inspection for registration spend less than two hours for which I have been charged $550.

Therefore if they do not think that $550 per two hours is an efficient return for the department's inspections then there is something very wrong with its operations.

They now propose to charge me **$8,530** for two hours work by the department's inspector to register my small family business to export 6-8 pallets of fruit and then charge the same amount to large corporations who export hundreds, or thousands, of times more fruit than I do and whose facilities are proportionally larger and require proportionally greater inspection services from the department.

It is self-evident that the department's contention that the new fees and charges are in any way equitable for companies within each of the tiers is a complete fiction.

The dishonesty of that contention is openly illustrated in the department's COST RECOVERY IMPACT STATEMENT which says that much of the cost "efficiencies" are due to an estimated reduced demand for Horticulture Export Certification activities **"...based on a 20% reduction in the number of establishments registered with the department at July 2011."** Which among other things will be because **"...some participants are not likely to renew their registration as a result of the new rates of charge!"**

Simply put, the department is admitting that it will make much of its savings by imposing inequitable and exorbitant fees selectively on small businesses to force them out of business and so reduce demand on its services.

COST EFFECTIVNESS and UNDERMINING OF OBJECTIVES

The AUSTRALIAN GOVERNMENT COST RECOVERY GUIDELINES 2005 require the department to assess the **"cost effectiveness"** and **"assess whether adopting cost recovery would undermine the objectives of the activity".**

Therefore they MUST show how that reduction and cessation of business activity of that 20% which they have identified in their COST RECOVERY IMPACT STATEMENT will impact on local economies and State and Federal economies and compare that with their departmental savings. That is just what assessing cost effectiveness, and assessing undermining the objectives of the activity means.

These things could not be legitimately achieved without specific consultation and standardized business data being collected from individual export companies the size, type and appropriate number of which would be representative of the 20% sub group of companies which they identify will make up this reduction and cessation of activity.

Without analysis of such data the department can not have any legitimate basis enabling them to comply with their duties in regard to assessing **"cost effectiveness"** and **"assess whether adopting cost recovery would undermine the objectives of the activity."** as required by the AUSTRALIAN GOVERNMENT COST RECOVERY GUIDELINES 2005.

Where is that data and analysis? And where did they get their data from?

It would be quite false for the department to suggest that it could be trusted to estimate these factors or develop a model to do so. Even with the best of intentions bias would be inevitable from related and motivated parties. And let's not forget we are dealing here with people who have demonstrated with their "averaging" and use of the word "equitable" that they don't even have the wit or integrity to comply with the basic rules of primary school level arithmetic and logic if it doesn't suit them.

At best, all of this is a classic case of a dysfunctional bureaucracy that has lost any grasp of it's supposed reason for existence. Truly, the tail trying to wag the dog.

Other than the department the only other people who seem to benefit will be the large corporations whose "key industry representatives" supplied the MTF with their apparently flawed submissions that were so readily and uncritically embraced by the department for its own purposes.

My strong feelings are that the preferred system would be a continuation of a local departmental inspector to independently maintain the integrity of the annual shed registration and both it and the produce inspection at the department's new designated $36 per quarter hour rate as part of a tiered system *of hourly rates.*

Flat rates across diverse ranges are inherently inequitable.

Hourly rate for service fees across diverse ranges are inherently equitable.

Regards,

Michael and Tanya Punturiero