

Citrus Australia Ltd ABN 75 130 238 792  
94 Lemon Avenue, Mildura VIC 3500  
PO Box 10336, Mildura VIC 3502  
t 61 3 5023 6333  
f 61 3 5023 3877  
office@citrusaustralia.com.au  
www.citrusaustralia.com.au



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Committee Secretary  
Senate Rural and Regional Affairs and Transport Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

## **SUBMISSION TO THE INQUIRY INTO THE EXPORT CONTROL BILL 2019 AND ASSOCIATED LEGISLATION**

### **Summary**

Citrus Australia appreciates the opportunity to provide input into the Inquiry into the Export Control Bill 2019 and associated legislation. Our comments in this submission relate only to the Export Control Bill 2019. Specifically, Citrus Australia has concerns with Chapter 3 (Accredited Properties) which we feel is an unnecessary part of the proposed legislation. We also raise concerns with the power of auditors to remove commercially sensitive material from businesses. The requirements in Chapter 3 have effectively been in place since 2018 when the Department of Agriculture made amendments to the Export Control (Plants and Plant Products) Order 2011. Those amendments have created an excessive regulatory impost on citrus growers and packers and the cost of administering the Horticulture Exports Program ('the Program') has now grown to a staggering A\$12.2 million. Citrus Australia is of the firm view that the root cause of the budget blow-out is the new regulation relating to accredited properties. Through the development of a highly bureaucratic process, the Department has created a rod for its own back. Over the last decade, we have witnessed little in the way of the export reforms we were promised. While the citrus industry is currently enjoying moderate success in export markets, the business of exporting has become more difficult and more expensive. The accredited property regulation provides a major disincentive for participation by small-to-medium sized businesses in exporting.

### **Introduction**

Citrus Australia is the Industry Representative Body of 1 600 citrus businesses, that produce approximately 750 000 tonnes of citrus on 26 000 hectares of land. Approximately one third of the crop is sold on the Australian domestic market for fresh consumption, one-third is processed into juice, and one-third is exported overseas. In 2018, Australian citrus exports totalled 256 000 tonnes to a value of A\$453 million. For the reader, this equates to over 12 000 40-foot containers (or semi-trailer loads). At the time of writing, exports in 2019 have exceeded a value of \$A500 million with the months of November and December still to be accounted for.

The top ten export markets in 2018 included:

- Greater China (111 000 tonnes)
- Japan (39 000 tonnes)
- Malaysia (15 000 tonnes)
- United States (12 000 tonnes)
- Singapore (10 000 tonnes)
- United Arab Emirates (9 000 tonnes)

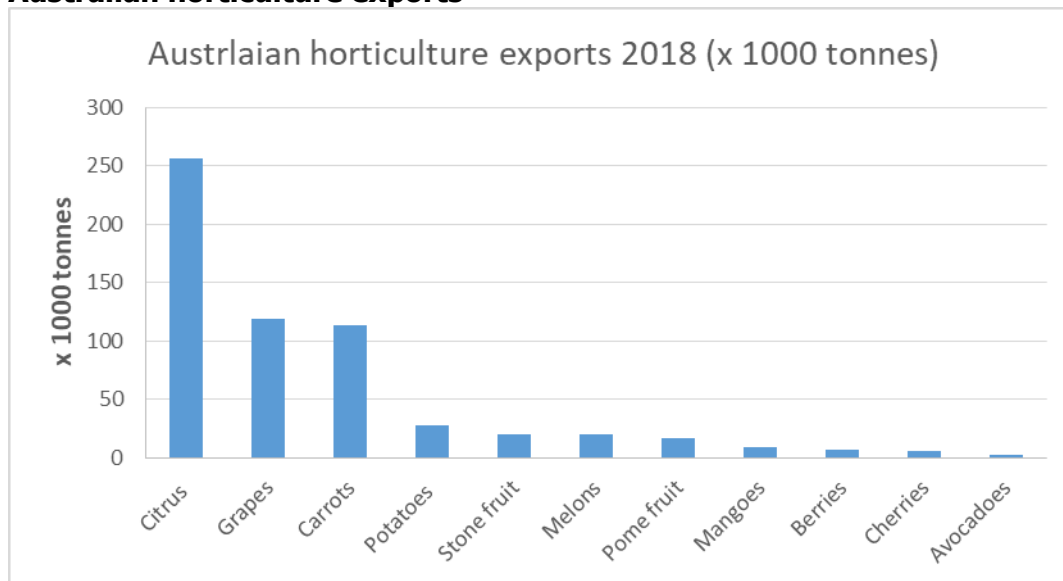
- Thailand (9 000 tonnes)
- The Philippines (8 000 tonnes)
- New Zealand (7 000 tonnes)
- Indonesia (7 000 tonnes).

Historically, the United States market was a strong focus for exports but competition from other southern hemisphere producers (namely Chile and South Africa) has meant that there has been a shift in focus towards Asia. In recent years, the greatest emphasis has been on servicing Japan and mainland China. While Australian citrus has long been exported to Hong Kong, mainland China is a relatively new market.

In Asia, the Australian citrus industry primarily competes for market share with South Africa and to a lesser extent, the United States during the seasonal cross-over, where late Californian fruit competes directly with early Australian fruit. The rapid rise in exports of citrus from Egypt also has an impact on the early supply of Australian fruit in certain markets. A number of Latin American exporting nations represent a small amount of 'noise' in Asia but are not currently considered major competitors.

Oranges make up approximately three quarters of the export volume, mandarins make up approximately one-quarter. Lemons, limes and grapefruit represent only a small percentage (typically 1-2 per cent) of exports.

### Australian horticulture exports



**Figure 1. 2018 Australian horticulture exports**

Figure 1 illustrates the volume of horticulture exports broken down according to industry in 2018. In the southern hemisphere, Australia is in a strong position to supply citrus and table grapes into northern hemisphere markets during the counter-season. Carrots are also a crop that compete well in overseas markets. Only minor volumes of other crops are exported, primarily into non-regulated markets. We put great emphasis on this to demonstrate that many of the other horticulture industries (other than the table grape industry) would not be in a strong position to provide meaningful commentary on the Accredited Property legislation as they remain largely unaffected by the Department's excessive use of regulation. The citrus industry however, has a large amount to lose if poor public policy is enacted and we would argue that it is already being disadvantaged by poor

public policy. There are currently 750 citrus growers and 75 citrus packing houses accredited for export.

### **New regulation - Citrus exports become more expensive and more difficult**

As stated above, the legislation relating to accredited properties is effectively already in place and is creating an unnecessary burden on citrus growers, packers and other members of the value chain. Moreover, it has created a high level of demand on Government resources, particularly administration within 'the Program'.

In 2018, the Department made amendments to the Export Control (Plants and Plant Products) Order 2011. Those amendments provided the Secretary (of the Department) with the authority to accredit properties (growers and packers) for export. Prior to 2018, the Department had no authority to accredit growers or packers. At that time, the Department merely had the power to issue a Phytosanitary Certificate (or not issue the phytosanitary certificate) depending on whether fruit met importing country requirements or not. It was a simple and practical approach. The system worked well and served the industry for many years. Citrus Australia therefore questions the relevance or necessity of the amendments and the insertion of the accredited property piece.

Prior to introducing the Accredited Property regulation, there was no consultation with industry. To our knowledge there was no regulatory impact assessment conducted by the Department. Through the Industry Consultative Committee, the Department simply advised that the changes were being drafted and stated (verbatim):

*"Given that there will be no substantive change in requirements, the Branch expects that there will minimal change in regulatory burden imposed on industry".*

The amendments set in motion a "snowball effect" with layer upon layer of new bureaucracy added to the export approval process. Teams of people were assembled to draft new performance standards and guidelines. New administrative systems had to be developed, and the new regulation added a large number of additional legal requirements that the Department is now required to fulfil (e.g. formal audit reports, letters of accreditation, corrective action reports, and advisory findings). Additional bureaucracy requires a large amount of time, effort and money to maintain. It therefore comes as no surprise to Citrus Australia that 'the Program' costs have now escalated to an unbelievable figure of more than \$12 million dollars annually.

The assertion by the Department that the new accredited property regulation would represent no further burden could not be further from the truth. In 2019, a small-to-medium sized citrus business in South Australia was subject to over 100 hours of auditing at a cost of \$13 860. The previous season cost just on half that amount. When Citrus Australia queried this invoice, the Department's response was that the business had "difficulty with compliance". Citrus Australia agrees – every single citrus business is now experiencing difficulty in adhering to the Department's draconian requirements. The case we cite is just one example. In short, the Department is making it more difficult and more expensive to export every year.

### **The return to full cost-recovery and the use of co-regulatory arrangements**

To better understand where the horticulture export industries are today, it is important to first understand where we started a decade ago.

In September 2008, the Australian Government released *"One Biosecurity a Working Partnership: an independent review of Australia's quarantine and biosecurity arrangements"* (the Beale Review). The

review provided the Australian Government with 84 recommendations on biosecurity reform. Recommendation 79 was that export certification functions should return to 100 per cent cost recovery. Prior to June 2009, the government provided a 40 per cent budget contribution towards export certification services. While the origin of the 40 per cent subsidy was never clear, it was generally accepted that it was designed to offset the government inefficiencies that existed – inefficiencies that have only worsened. In making recommendation 79, Beale stated:

*"As a corollary, this change (full cost-recovery) should be accompanied by greater use of co-regulatory arrangements, such as compliance agreements, to reduce the cost of the regulatory service wherever possible".*

While many of the recommendations made by Beale were never adopted, the Department pursued recommendation 79 with relentless enthusiasm. However, other than the introduction of industry based inspectors (Authorised Officers) to inspect goods prior to export (which were in fact already in place under a different name), the industry has seen little in the way of the co regulatory approach recommended by Beale. Similarly, there appears to have been little in the way of genuine effort to reduce the cost of regulatory services. Instead, we have witnessed a growth in bureaucratic process with constant re-invention of export requirements. Once again, we state that exporting citrus has become more difficult and more expensive.

### **A quantum leap forward but zero cost savings**

Subsequent to the Beale Review, the Horticulture Ministerial Taskforce was established to inform the Government's export reform agenda. One of the only practical outcomes from that process was the use of Authorised Officers (industry-based) to inspect goods prior to export. Prior to that time, some businesses could perform inspections under what were known as Approved Arrangements - but these were only accepted by a limited number of importing countries.

Prior to the roll-out of Authorised Officers, the Government inspection model can only be described as a debacle. The timing of inspections had to be booked with absolute precision but government service provision lacked any coordination. When issues arose, appointments had to be re booked and re inspection would take many days. Exporters were quite literally 'missing the boat'. The Department simply could not manage a workforce of inspectors, especially given the peaks and troughs in demand that coincided with production cycles.

The roll-out of the Authorised Officer model provided the industry with a quantum leap forward. Issues related to booking inspections were resolved overnight. To our knowledge, less than one per cent of inspections are now performed by government. It is inconceivable that the current volumes of grape (119 000 tonnes) and citrus (256 000 tonnes) exports under the old government inspection mode would be possible.

However, although the industry now enjoys greater flexibility, costs have not been reduced. The inspection function is now performed by industry and the government's only role is to produce certification; but export fees and charges continue to escalate. Moreover, the cost to industry to conduct their own inspections is a material cost. In the Cost Recovery Impact Statement of 1 July 2012 - 30 June 2013, the Department estimated that the 2012-13 program expenses would be \$7.3 million per annum. It is important to note that that this prediction was made when the Department had a workforce of inspectors, a fleet of vehicles and a number of offices in regional Australia. Citrus Australia therefore finds it difficult to comprehend how 'the Program' costs (without a workforce of inspectors and associated on-costs) are now more than \$12 million, and questions how this is possible. The simple answer is that through an obsession with the machine, 'the Program' has

continued to build new layers of bureaucracy, ultimately generating more work for themselves which is inevitably paid for by industry and more specifically by hard-working growers.

At the time of the Export Certification Reform Package (in the earlier part of this decade), the Australian Government proudly boasted that the package would:

*"deliver a reduction in government costs to industry by around \$30 million a year across the export programs".*

Given that since that time, the operating costs of the 'the Program' have increased by \$5 million, the forecast and statements made by the Department can only be described as laughable. On the basis that previous performance is a reliable indicator of future performance, Citrus Australia cannot help but be cynical about any statement or forecast made by the Department of Agriculture.

### **Importing country requirements and accredited property regulation**

Citrus Australia strongly asserts that the core of 'the Program's operating deficit is the Department's own doing. Through an over-zealous interpretation and approach to verifying importing country requirements, the Department is now a tangled mess that may be difficult to unwind.

Australian citrus is exported to more than 50 overseas destinations. Many of those markets have no quarantine requirements at all. Many require that fruit is subject to treatment for fruit flies (either Pest Free Area certification or cold disinfestation) and that goods are inspected and found free from harmful pests. A small number of importing countries require that additional pest control measures be applied in orchards and packing houses. These importing countries include:

- South Korea
- China
- Thailand
- United States (to a lesser degree)
- New Zealand (to a lesser degree)

While the wording between each importing country differs slightly, in general:

- growers must monitor pests and diseases, apply appropriate chemical control measures, apply certain cultural practices (e.g. pruning) and maintain records
- packers must source fruit only from 'approved' growers, inspect fruit for quarantine pests, maintain product traceability, and maintain records
- the Department must ensure that orchards and packing houses have adequately achieved these criteria.

*Prima facie*, these requirements do not appear unreasonable, but let us continue.

### **An obsession with the machine**

The introduction of the new accredited property regulation in 2018 triggered a "snowball effect" that precipitated an avalanche of new standards, guidelines and procedures which were designed to support the new regulation. The audit process for growers and packers subsequently evolved from what was once a simple verification to what can now only be described as a forensic investigation.

To demonstrate the Department's obsession with rules and regulations, here we list the plethora of documents that an ordinary citrus business is required to read, understand and implement prior to being audited for export to South Korea, China and Thailand.

- Protocol of phytosanitary requirements for the export of citrus from Australia to China between the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China and the Australian Government Department of Agriculture and Water Resources (19 pages)
- Australian citrus exports to the Republic of Korea: Import plant quarantine requirements of sweet orange and lemon fresh fruits from Australia (13 pages)
- Conditions for Import of Citrus Fruit from Australia (into the Kingdom of Thailand) B.E. 2558 (2015) (28 pages)
- Department of Agriculture - Work Plan Australian Citrus Exports to the People's Republic of China (25 pages)
- Department of Agriculture - Work Plan Australian Citrus Exports to the Republic of Korea (20 pages)
- Department of Agriculture - Work Plan Australian Citrus Exports to Thailand (26 pages)
- Australian citrus to Korea, China and Thailand Integrated Pest Management, orchard registration, and packing house controls (27 pages)
- Department of Agriculture - Management of horticulture export accredited properties (19 pages)
- Department of Agriculture - Guideline: Audit of horticulture export accredited properties (15 pages)
- Department of Agriculture - Performance standards for crop monitors (4 pages)
- Department of Agriculture - Performance standards for farms (6 pages)
- Department of Agriculture - Performance standards for packhouses (5 pages)

The total documentation that the Department requires, amounts to a staggering 207 pages. If the business intends to export to New Zealand and the United States, there would be at least an additional 100 pages to filter through. If the packing house intended to inspect goods and load containers, there would be another 20 pages to consider. Citrus Australia questions whether this is really "export reform".

### **An impossible task**

It is important for the Committee to recognise the scale and size of the Australian citrus industry. In Australia, there are 1 600 growers that farm on approximately 26 000 hectares. A key fact is that 30 per cent of the businesses occupy 80 per cent of the farming land. This essentially means that there are approximately 500 medium-to-large enterprises that do most of the heavy lifting. These businesses are typically well-resourced. The other 1000 businesses are small growers (family farms, husbands and wives, fathers and sons, grandfathers and sons etc.) working to support their families. Many of these farmers are also reliant upon off-farm income as the farm income alone is insufficient. Citrus Australia is emphasising this point because it is these very businesses that are being disadvantaged by the Department's obsession with rules and regulations. It is inconceivable that any of the 1000 small growers we describe could possibly understand and fulfil the plethora of new standards, rules and guidelines that the Department continues to invent. Achieving compliance has only been made possible through a large amount of assistance by the packing houses they supply. Even the most well-resourced businesses are experiencing difficulty. The policy officers in the Department who continue to invent these new requirements have no field experience, no understanding of agricultural production, or any empathy towards the hard-working farmers they are paid to serve. Citrus Australia accepts these facts but feel that it would have been nice if these

officers made a conscious effort to better understand production systems and industry practices before dreaming up new policies and procedures.

### **Australian citrus exports - falling behind our competitor**

As part of the requirements for citrus exports to China, the Department is required to provide China with a list of approved orchards and packing houses each season. As a direct result of the Department's accredited property regulation and its highly bureaucratic processes, the Australian citrus industry has fallen behind its major competitor, South Africa. In 2019, the Department provided the Chinese Government with a list of accredited citrus properties in April after annual audits were finalised (note that the citrus season commences in late April). That list contained the details of approximately 750 citrus growers and 75 packing houses. The Chinese Government did not approve that list until nearly five months later, at the tail-end of the 2019 citrus season. This resulted in loss of export opportunities and serious financial losses for some business due to distressed cargo in Chinese ports. While the Department provided a range of reasons to explain the delays, the Department must accept at least some responsibility.

In contrast, our major competitor (South Africa) had its list (over 23 000 entities) approved by China the previous January. At a recent international conference, South African exporters were ridiculing the Australian citrus industry and the Australian Government. While our Department was dithering with audits and inefficient administrative procedures, the South African citrus industry was literally loading entire vessels with citrus destined for China. It is simply not good enough that our competitors are beating us to market due to government red tape.

### **Powers of auditors**

As an aside, Citrus Australia would like to raise concerns with some of the text in Chapter 9 (Powers and officials). The text states that auditors may:

- a. request a person who the auditor reasonably believes has information or documents that are relevant to the audit to answer questions, provide information in writing, or produce the documents;
- b. take samples of goods, or from equipment or other things used in export operations or other operations, to which the audit relates take, test or analyse samples of goods, or from equipment or other things used in export operations or other operations, to which the audit relates;
- c. arrange for another person with appropriate qualifications or expertise to take, test or analyse samples of goods, or from equipment or other things used in export operations or other operations, to which the audit relates.

Citrus Australia strongly asserts that it is inappropriate for any auditor (government or commercial) to remove items or documents from any business. Much of this information is commercially sensitive. Citrus businesses gain an advantage over their competitors through a range of measures (e.g. pest and disease management, fertigation, irrigation, genetics, post-harvest practices). We have no confidence that the Department could appropriately manage the chain of custody for such items, and feel that the intellectual property and trade secrets of the businesses we represent would be compromised. Auditors travel between properties in motor vehicles. It is doubtful that these vehicles would achieve the Department's own security requirements for identifying and protecting Commercial-in-Confidence information.

## **Conclusion**

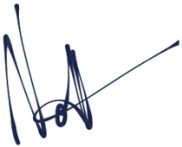
Citrus Australia considers that Chapter 3 of the Export Control Bill 2019 is a poor piece of legislation and completely unnecessary for the export of Australian citrus. Given that the industry enjoyed success for many years without such legislation, we question why it was ever introduced. In developing the legislation, there have been only poor attempts by the Department to understand agricultural production systems and as a result, compliance has become a highly bureaucratic, difficult, and costly process for all parties - including Government. Providing the Secretary with the Powers to accredit properties for export has already created a high level of regulatory impost on the citrus industry and is causing a large amount of anguish and distress for hardworking Australian citrus growers.

'The Program' staff should ask themselves only one question:

*"How do we make the process less bureaucratic, not more bureaucratic?"*

And then get out of the way and let industry grow exports, jobs and wealth in rural and regional Australia.

Sincerely,



Nathan Hancock  
Chief Executive Officer  
Citrus Australia

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