

## COMPLIANCE AGREEMENTS - A FRAMEWORK FOR INDUSTRY CO-REGULATION

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### Introduction

Co-Regulation, in the context of the Australian Quarantine and Inspection Service, has been defined as:

*The concept of industry involvement in traditional AQIS regulatory activities, both import and export, with Compliance Agreements (including arrangements such as Quality Assurance) being the mechanisms for managing these arrangements between AQIS and industry.*

In the international supply and logistics chain, Co-Regulation, by way of Compliance Agreements, can assist Australia's very important quarantine tasks and can achieve substantial operational and economic benefits for participating parties. The development of a generic Co - Regulation model was aimed at bringing a number of "ad hoc" arrangements under one administrative umbrella, achieving consistency and facilitating the expansion of co-regulation.

### Key Strategies

Some of the underpinning **key strategies** for co-regulation to work in the international supply and logistics supply chain are:

1. The **Continuum of Quarantine**, being **pre-barrier**, **barrier** and **post barrier** quarantine measures.

- **Pre-Barrier**

"**Keeping the risk offshore**" was a major strategy of the 1996 Quarantine Review (Nairn Review). Risk mitigation and preventative measures at the supply end underpin many of the compulsory pre-shipment treatments applicable to imports and exports worldwide. This is not a new, or "Australian only" requirement. Many of our exports are issued with Phytosanitary certificates by AQIS to certify a quarantine condition of specific goods so they may be imported into the country of destination. On the reverse side many goods being imported into Australia require certification from authorities in the exporting country.

In terms of the fertilizer import / logistics supply chain the pre-barrier components are:

the supply / manufacture and inland transportation leg,

the pre-shipment storage and loading operations

the vessels being fit to carry cargo without risk of contamination.

*It is important to note that FIFA members have achieved considerable success in the pre barrier area from 1996 onwards. Incidences of contamination have been reduced dramatically and the efforts of FIFA members were recognised with a Quarantine Award in 1999.*

- **Barrier**  
The barrier components are the inspection / surveillance activities prior to and during the discharge operation and all other on-shore activities prior to the release of cargo / goods onto the Australian market.
  - **Post-Barrier**  
The post barrier component is the continual monitoring of areas where problem may occur and, if an incursion has been detected to manage its eradication.
2. The "**Shared Responsibility**" concept where the public, industry and regulatory agencies work together on quarantine issues. It is a joint responsibility to maintain Australia's relatively pest free status.
- This was another major strategy of the Nairn Review and one that has been generally embraced by industry in a responsible and proactive manner. For responsibility to be shared and to gain support for this strategy it is important for AQIS, in the first instance, to explain to industry and the public the potential harm from exotic pests and diseases. Industry has developed a "Quarantine Awareness" CD as its contribution to this task.
3. The **Managed Risk** approach. *Zero risk* is not an option; an "appropriate level of protection" needs to be established.
- Australia is a signatory to the World Trade Organisation and cannot use quarantine measures to unfairly keep imported products out.
- The enforcement of a "zero risk policy" is just not possible.

### **Key Pre-requisites**

Having established the key strategies, the key pre-requisites are as follows:

#### **Co-Regulation - Compliance Arrangements should:**

- **Be voluntary**  
Co-regulation infers that it takes two or more to make the system work. And it has to be a "win win" situation to be attractive to participate in.
- **Have mutually agreed / negotiated conditions**  
Any agreement must be negotiated to a mutual benefit and obligation.
- **Have a legislative basis / backing**  
The Quarantine Act, as amended, provides for the making of Compliance Agreements under Sect 66 (B) 1.  
Penalties are the last resort; economic considerations drive the process.
- **Be based on the principle of "Informed Compliance"**  
Agreed competency based training and skill standards underpin co-regulation.
- **Be outcome orientated, not process driven**  
Co-regulation is a means to an agreed outcome not a procedure driven compliance directive within a regulatory system.

Compliance Agreements are NOT operating on the basis that "non-compliance" attract a regulatory / fiscal penalty. They are designed to provide those who comply with advantageous operational and commercial conditions. Non compliance will, in the first

instance, attract increasing AQIS intervention that will have an adverse commercial and operational impact.

This not to say that serious non-compliance is not subject to the penalty provisions of relevant legislation.

### Co-regulation Structure

The Co-regulation Structure is made up of two components:

1. The **Compliance Agreement**, consisting of:

- i) **A set of Standard Terms that detail how the Compliance Agreement is to operate in accordance with its governing legislation.**

*(In the case of quarantine issues subsection 66B(1) of the Quarantine Act applies. The section reads:*

*(1) A Director of Quarantine may, on behalf of the Commonwealth, enter into an agreement (a compliance agreement) with a person in connection with:*

*(a) the application of particular procedures in respect of goods; and*

*(b) the supervision, monitoring and testing of the person's compliance with those procedures.)*

The terms outline the various minimum requirements for operating a "Compliance Agreement", including the provision for defining the scope, cancellation, suspension or variation of the agreement and its effects. They also outline a range of requirements and the policy undertakings by the Commonwealth in respect to operating the agreement.

*In brief, this is the overarching governing legal instrument under which arrangements operate and conditions can be enforced.*

- ii) A **Table of Schedules** that provides an index of each Schedule and its associated Operational Procedures Statements operating under the Compliance Agreement at any point in time.
- iii) A **Schedule** detailing all the required legislative links and the important *outcomes* to be achieved under the terms of the Compliance Agreement and contains a mandatory requirement for a set of Operational Procedure Statements which detail the *procedures* that industry parties must follow to meet the Schedule *outcomes* and the *AQIS policies* relevant to ensuring compliance with those procedures.

Examples of the provisions outlined within a Schedule include the purpose, prerequisites and scope of activities covered by the Schedule, the requirements and responsibilities in respect to training, approval processes, assurance procedures and the outcomes of the co-regulatory activity.

*These components are the essential legal parts of the agreement.*

2. The **Operational Procedure Statements** attaching to each schedule consist of:

- i) A **Process Management System** that details the specific procedures and activities that the industry party is required to perform in order to meet the *outcomes* in the Schedule. Examples of appropriate systems that fit these requirements include many AQIS-developed work instructions or manuals (as used by accredited persons under the Broker Accreditation Scheme), or formal ISO-style quality manuals.
- ii) An **Audit Policy** that details the agreed methods to measure the industry party's compliance with the procedures outlined in the Process Management System.

- iii) A **Compliance Policy** which details methods that will be adopted by AQIS, after the detection of non-compliance. For example a minor non-compliance may result in an increased audit rate.
- iv) An **Appeals Policy** that details the avenues available to the industry party to settle disputes over any decision made by AQIS under the Compliance Agreement.
- iv) A **Review Policy** which details the process for the review and renewal of the Schedule.

*It is important to stress that all conditions in the Operational Procedure Statement should be agreed in accordance with the prerequisites outlined previously.*

### **Informed Compliance**

Inherent in any Compliance Arrangement is the concept of "**Informed Compliance**", which has three major components:

- **Training to Competency based standards**

Standards of competency can be either officially recognised ones such a tertiary qualifications, or those agreed between the parties. They must be commensurate with the outcomes the agreement seeks to achieve.

- **Accreditation**

Persons, having been trained to the agreed standard and having passed an assessment of competency are "accredited" by AQIS for the purpose of being responsible for the functions detailed in the agreement.

In many instances pre-requisites for accreditation might be dependent of competency in skills areas other than those directly related to the AQIS functions.

In the Customs Broker Accreditation Scheme, for instance, an accredited person must be licensed under the provisions of the Customs Act

An accredited "Fertilizer Ships Surveyor" may well have to be a Master Mariner.

- **Skill Maintenance**

Accredited persons are obliged to keep up to date with any changes in relevant AQIS requirements / procedures. This is usually achieved by the requirement to maintain an up to date manual, periodic re-accreditation training and competency assessments.

The AICCC has been very active in this area and has developed a generic Internet based training package, named "Guardian". This initiative was primarily aimed at assisting industry in achieving "Informed Compliance" pre-requisites in a contemporary and efficient manner. The system has extensive administration features and provides direct access for regulatory bodies such as AQIS to monitor skill levels, maintain a database of accredited persons etc.

The system has recently undergone a very successful "proof of concept" evaluation involving the training and re-accreditation of some 1400 persons Australia wide. It is currently being extended to offer generic training packages in a range of skills such as operating common software packages like Excel, Outlook and the like.

The AICCC has committed considerable funds and resources and has worked with AQIS personnel in developing the Co-Regulation model, the training facilities and the administrative system previously outlined. The Quarantine and Export Advisory Council has taken a very close interest in this initiative and is fully supportive of its aims.

Co-Regulation by way of Compliance Agreement has been in place for close to three years now in the Barrier Clearance Industry. The success of these arrangements has lead to further functions being included in the scheme.

Some nine co-regulation projects are currently in various stages of development ranging from functions in the barrier clearance of personal effects to the compliance with compulsory ballastwater management requirements that come into effect on 1<sup>st</sup> July 2001

FIFA, through its membership of the Industry Working Group on Quarantine (IWGQ) is a member of the AICCC and has access to all its resources.

The framework outlined in this presentation provides one way forward to achieving a common system applicable across industry and aimed at achieving more consistent and predictable outcomes for the fertilizer import logistics chain.

The success of any co-regulation arrangement depends on both parties agreeing and accepting the "Shared Responsibility" concept.