

8 February 2012

Ms Lisa Corbyn  
Chief Executive Officer  
NSW Environment Protection Authority  
PO Box A290  
Goulburn Street  
Sydney NSW 2000

## **Submission regarding the Protection of the Environment Legislation Amendment Act 2011**

Dear Ms Corbyn

I write to you concerning the *Protection of the Environment Legislation Amendment Act 2011 (Amendment Act)*, assented to by the NSW Parliament on 16<sup>th</sup> November 2011.

As the Australian peak industry body, representing 94 per cent of pig production nationally, with 156 members in New South Wales, Australian Pork Limited (APL) has serious concerns regarding this legislation, both in terms of the Acts' content and the process undertaken.

We herein outline our concerns as a submission to the EPA.

### **Consultation**

No consultation with intensive livestock industries was undertaken in the forming of this legislation. APL regards this as a breach of due process, having been denied the opportunity to contribute to the Act's design. We will be meeting Minister Parker to voice the displeasure of the entire industry in this regard.

We also note that the information sessions held in Sydney and Newcastle on the 30<sup>th</sup> and 31<sup>st</sup> January 2012 regarding the content of the regulation for pollution incident response management plans catered solely to those able to attend a city location. The vast majority of our members are small and medium sized family-farms in rural areas without the resources of large companies to attend city based briefings. These information sessions effectively excluded rural based small-holders, and were a further example of a failure to properly consult stakeholders.

### **Privacy**

- As written in the *Amendment Act*, it is likely that published monitoring results will be misinterpreted, with penalty notices made public.
- It remains unclear in *the Act* how complaints, which are unfounded and vexatious, will be handled, along with issues that have been rectified.
- The listing of producers' addresses and details will expose them and their operations to activist activity, jeopardising the security of producers and their families.
- Activist activity, including farm invasions, presents a major biosecurity threat.

### **Compliance burden**

- The *Amendment Act* imposes significant changes in the compliance burden on our members, particularly small and medium sized family-run enterprises, with minimal ability to absorb additional costs.
- Changes to pollution incident notification requirements impose additional actions and responsibilities on producers without regard for existing industry incident response plans. The Australian pork industry already has environmental risk assessments and environmental management plans that include contingency plans and emergency strategies as per the National Environmental Guidelines for Piggeries. Notification requirements should be restricted to those bodies considered relevant to the pollution incident.

- New duties to prepare and implement pollution incident response management plans will result in additional costs to industry, and does not include provision for recognising existing industry arrangements, as in the above point.
- New requirements for publishing of monitoring results within 14 days will result in additional costs, and potentially violate the privacy of producers and their families.
- Other changes providing the appropriate regulatory authorities, the Environmental Protection Agency (EPA) and the Director General of the Ministry of Health to impose unilateral obligations on pig producers lack scientific justification, including the additional cost of paying for an ill defined “analysis of the human health and environmental risks arising from a pollution incident”.
- The compliance burden is the same for a small family-run pig farm, as for a large industrial chemical manufacturing plant. Unnecessary government regulation imposing further compliance costs on an industry that already operates to the highest standards is likely to push many small family farms into a negative financial position, forcing them out of the industry.

**Commensurate risk**

- The scope of this legislation, which is clearly aimed at large industrial operations such as Orica, is far too broad.
- This legislation will impose unnecessary burdens on licensees who do not present a credible threat to the environment on the scale this legislation is attempting to regulate against. A small family-run pig farm does not pose the same environmental risk as a large chemical manufacturing plant, and should not be regulated using the same provisions.
- This legislation clumsily requires all licensees, from family-run pig farms to large industrial chemical manufacturers, to comply with the same requirements, failing to tailor provisions commensurate with risk.
- NSW’s environmental legislation disregards the principle of proportionality concerning environmental risks, resulting in the excessive, onerous and unjustified requirements in the *Amendment Act*.

Ms Corbyn, the *Amendment Act* is clearly aimed at responding to pollution incidents from large industrial concerns, such as Orica. Imposing the same compliance requirements on small family-run farms is both impractical and inequitable. The Act does not account for our industry’s existing environmental management plans and emergency strategies, and also exposes our producers and families to both risk and vexatious complaints through the publication of their details and monitoring data online.

Had APL been given the opportunity to be involved in this process, as would have been reasonably expected, these concerns could have been addressed prior to the commencement of the requirements. However, we now urgently seek to have the issues outlined in this submission amended by the department to reflect the degree of environmental risk posed by respective industry sectors.

Yours sincerely



Kathleen Plowman  
General Manager, Policy

CC: Robyn Parker - NSW Minister for the Environment  
Katrina Hodgkinson - NSW Minister for Primary Industries  
Monica Collins - A/Director Reform and Compliance, NSW EPA