NATIONAL COMPETITION POLICY REVIEW OF CALM ACT

REPORT ANALYSIS AND RECOMMENDATIONS ARISING FROM SUBMISSIONS ON PROPOSALS TO REVOKE CERTAIN FOREST MANAGEMENT REGULATIONS AND ALLOW TRADING OF APIARY SITES ON CALM MANAGED LAND AND CROWN LAND

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REPORT ANALYSIS AND RECOMMENDATIONS

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The National Competition Legislation Review of the CALM Act and supporting legislation by ERM Mitchell McCotter recommended that two Regulations in the *Forest Management Regulations* be abolished. The regulations relate to a requirement to:

1. Be registered as a Beekeeper under the *Beekeepers Act* and hold more than 25 hives in order to gain an apiary site (Regulation 73(2));

2. Only hold a maximum 5 apiary sites for every 50 hives (South West Zone) and 4 sites for every 50 hives (Remote Zone) (Regulation 73(3)).

The consultants also recommended that consideration be given to establishing mechanisms for the trading of apiary sites.

GENERAL

In January 2000 CALM released a discussion paper on the possible trading of apiary sites. The public submission period closed on the 20 April. Thirty (30) submissions were received.

The number of submissions received was disappointing. Given the importance of the matter and the level of interest generated, a higher number of individual beekeeper submissions was expected. However it may be that many beekeepers relied on the submission from their representative body.

The key issues and questions arising form the paper can be summarised as follows:

1. Removal of Regulations
   The repeal of the Forest Management Regulations as recommended by the Competition Policy consultants.

2. Site Trading
   Should site trading be introduced?

3. Mechanism for Trading
   If supported, what is the most efficient and least disruptive mechanism for allowing trading?

4. Royalties
   Should the proposal to introduce a royalty be implemented?

5. Tenure
   What is the most appropriate form of tenure and length of permit?

6. Compensation
   Should permit holders be eligible for compensation if a site permit is cancelled or honey production is disrupted because of forest/park operations?

7. Rental Zones

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Does the current zoning system (that creates a differential rental system) require revision/modification?

8. Rental Levels
How should rentals be set and who should set them?

9. CALM Act and Regulations
Changes to legislation.

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1. *REMOVAL OF REGULATIONS*

a) Hive to Site Ratio – [Regulation 73(3)]

The intent of this regulation is to prevent monopoly control or control by a small number of beekeepers. However, because the Crown and CALM estate is close to site saturation, this regulation now has little effect. The fear that one beekeeper or a large corporation could monopolise sites (under a trading regime) and thus unfairly restrict competition is probably not real and in any case would be subject to the Trade Practices Act.

Eight (8) submissions supported the removal of this regulation. Three (3) opposed its removal and nineteen (19) made no comment. Relative to other matters, there was very little comment on this issue. This supports the generally held view within CALM and the industry that beekeepers are not concerned about the removal of the Hive to Site ratio requirement.

Removal of this regulation would facilitate the trading of sites. CALM supports the removal of the regulation.

b) Hold 25 Hives and be Registered as a Beekeeper – [Regulation 73(2)]

Three (3) submissions supported the removal of this regulation. Fourteen (14) opposed its removal and thirteen (13) made no comment. This proposal attracted a considerable amount of comment. This is to be expected. While most beekeepers support the concept of trading they want to confine trading to registered beekeepers. This is a predictable reaction from beekeepers who are seeking to maximise the advantages of trading and minimise external competition to existing beekeepers.

The requirement to hold twenty-five (25) hives was originally introduced as a mechanism for ensuring bona-fide access and use of apiary sites. The regulation was aimed at ensuring sites were being used efficiently. Beekeepers are concerned that the proposal would allow organisations, individuals and investors to enter the industry, thus increasing competition by allowing additional entrants into to the market. This proposal (removal of the regulation) is aimed at achieving the very thing that beekeepers appear to fear – an increase in competition forces.

This regulation acts as an obstacle to enter the industry. In the absence of this regulation market forces would dictate the viable level of hive ownership. Presently a person wishing to enter the industry would have to purchase an entire business from another beekeeper and then obtain his/her sites by transfer of permit. In the event of trading (assuming the removal of this regulation) a person would be able to enter the industry by simply purchasing one site. However to be able to keep a hive or tend bees a person would still need to register as a beekeeper under the *Beekeepers Act*.

The removal of this regulation would not create a disease risk as suggested by some submissions. The requirement to register as a Beekeeper under the *Beekeepers Act* would still be enforced by AGWEST for those individuals participating in the activity of tending bees and keeping hives. So long as the individual involved in such activities was registered as a beekeeper the "owner" of the apiary permit would not necessarily need to be registered.

In comparison, there is no legal requirement for beekeepers seeking access to private property to prove they are a registered beekeeper. Removal of the regulation would provide consistency with practices occurring on private lands.

Recommendation:

- Regulation 73(2) and Regulation 73(3) of the Forest Management Regulations be repealed. The removal of the regulations will facilitate trading and allow improved access to those individuals and organisations wishing to enter the industry.

Implications for Government:

The above recommendation will meet the proposal recommended by ERM Mitchell McCotter and bring the regulations in line with National Competition guidelines.

The removal of the regulations is a prerequisite to allowing trading.

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2. *SITE TRADING*

Twenty (20) submissions supported site trading. Only three (3) opposed trading and a further seven (7) made no comment. Of the twenty (20) submissions in favour of trading, nineteen (19) provided conditional support. The conditional support relates to allowing trading between registered beekeepers only.

Those in favour of trading believe that it will:

- rationalise site ownership;
- lead to improved efficiency and utilisation of a limited resource;
- legalise the current practice of "transferring" sites when a business is sold;
- allow sites to be bought without having to own/buy bees;
- add value to their sites and business;
- provide greater security;
- provide the opportunity to become a more competitive industry;
- assist new and younger beekeepers to enter the industry.

The main issue of concern to those opposed to trading is the impact that large honey-packing houses or other businesses could have on small beekeepers if they could buy and hold sites. Although only three submissions opposed trading, anecdotal evidence indicates that in the interest of self-preservation many smaller beekeepers oppose trading. Most large beekeepers are supportive of site trading on the proviso that trading only be permitted between registered beekeepers.

Clearly, if trading is allowed any unjustifiable restrictions controlling entry to the market (ie, those allowed to trade) would be anti-competitive.

The present restrictions on who can hold a site and other prerequisites are considered unjustifiable and therefore site trading should be permitted subject to Regulation 73(2) and 73(3) being repealed.

Recommendations:

- permit holders be permitted to sell or trade permits to any person or organisation.
- as a matter of policy CALM will advise purchasers of permits that
  - if they intend to keep bees AGWEST requires them to be registered under the *Beekeepers Act*, and
  - CALM will provide AGWEST with a regular update of CALM/Crown land permit holders.
- site trading to be administered by a simple site transfer system that achieves full cost recovery requirements.

Implications for Government:

The above recommendation will meet the proposal recommended by ERM Mitchell McCotter. The ERM recommendation is a policy recommendation and not a legislative one. As such Government would be free to ignore the recommendation. This would mean that Government would meet competition policy requirements whilst avoiding the implications (both good and bad) of trading.

As it stands Government will not benefit financially from the trading of site permits.

The trading of apiary site permits will create a precedent and expectation for CALM's commercial tourism licence holders to have their licences made tradeable.

3. *MECHANISM FOR TRADING*

The industry is unanimous that trading of sites should commence by confirming the current "ownership" of site permits. The option to declare sites vacant and allow beekeepers to bid for sites through a tender or auction mechanism is strongly opposed by beekeepers and industry. No submission supported this option.

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Most beekeepers believe that the public auction/tender option would:-

- cause chaos in the industry;
- be a very disruptive process for industry;
- cause a massive administrative workload for CALM;
- evaporate the money and effort beekeepers have invested in their sites;
- jeopardise security of sites;
- disrupt the planning of hive placement on sites;

- make the industry less efficient;
- cause unnecessary animosity between beekeepers;
- cause significant ill feeling toward CALM;
- be a major cost to CALM which would be passed on to beekeepers through higher rentals.

Much of the beekeeper concern about tendering of sites is probably accurate. CALM would be required to establish an additional administrative exercise to undertake the task of tendering sites. Considerable resources would need to be applied to the task and the implementation contains numerous transitional difficulties.

While such an approach would provide the State with a one off cash windfall, such an approach strengthens the industry position to argue for compensation and long term permits. It would be a more prudent long-term decision for the State to avoid future compensation and forgo the immediate cash-flow.

CALM does not support the tendering option because the costs outweigh the benefits. Retention of the status quo (ie, maintain current ownership) will allow beekeepers to build on benefits of the current system and make new gains based on private transactions between existing beekeepers and other market players. It will maintain stability in the industry.

Recommendations:

- Subject to the revocation of Regulations 73(2) and 73(3) ownership of existing sites be confirmed.
- New permits be issued in most cases for the maximum period allowed under the Act or Regulations (currently five years but see point 5. below).

4. *ROYALTIES*

An issue of concern to all beekeepers is the impact that royalties will have on their business.

Seventeen (17) submissions did not support the introduction of a royalty. This is to be expected. The industry is unlikely to support an additional cost on production. Only six (6) submissions supported the royalty proposal, four (4) of those conditionally.

In Western Australia the right to forest produce on Crown land is retained by the Crown on behalf of the community. The sale and removal of timber and other forest produce is regulated and controlled by contracts and permits under *the Conservation and Land Management Act, 1984.*

Forest produce is defined as:

> "trees, parts of trees, timber, sawdust, chips, firewood, charcoal, gum, kino, resin, sap, honey, seed, bees-wax, rocks, stone and soil....."

The CALM Amendment Bill proposes to replace "royalties" with "forest produce charges".

Section 92(1) of the *CALM Act* requires the payment of a royalty in respect to permits or licences issued for forest produce. Even though honey and beeswax is forest produce under the Act's definition, for reasons unknown, a royalty for honey has not been applied to date.

A royalty would be a payment made by a beekeeper to the government for the right to exploit the floral resource and extract honey and other related products from CALM managed land and other Crown land. It is not related to government cost recovery.

It would be entirely consistent for the beekeeping industry to pay royalties like other industries exploiting a community resource. This is confirmed by the *CALM Act.*

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Royalties are usually based on production. In the case of honey a royalty based on production is not measurable or transparent. The movement of hives between private sites and crown sites would render CALM/Crown production figures meaningless and open to abuse.

There is also an argument that other benefits beekeepers obtain from using Crown Land should be captured by a royalty, such as pollen, queen bee production, bees produced for pollination or package bees even though these other benefits are not defined as forest produce.

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One possibility is to impose a royalty (forest produce charge) based on a percentage of the market value of sites. This could be determined by the Valuer General.

A draft paper on the application of alternative royalty options has been prepared for consideration of beekeepers and industry. The paper identifies two options (not based on production) for an efficient and equitable royalty (forest produce charge) that could be implemented. The proposal is likely to generate around $70,000 per annum.

Recommendations:

- A non-production based royalty (or forest produce charge) that is practical, fair and easy to administer be applied to beekeepers accessing and exploiting honey and other resources on CALM managed and Crown land.
- The draft discussion paper on the application of a royalty (forest produce charge) be forwarded to beekeepers for comment.

Implications for Government:

Beekeepers are likely to lobby vigorously to prevent a honey royalty (forest produce charge) being introduced. The State would benefit from the introduction of a royalty or forest produce charge.

5. *TENURE*

Beekeepers are seeking the longest possible period of access with the most secure form of tenure. For instance, the WA Beekeepers Association submission seeks a twenty (20) year lease. Quite clearly a lease would not consistent with the transitory nature of beekeeping and the low level of "on site" capital investment.

Only eighteen (18) submissions commented on this subject, ten (10) of which nominated twenty (20) years as a suitable permit period. Four (4) nominated ten (10) years and only two (2) supported the current tenure period of five (5) years.

Beekeepers claim that a failure to provide adequate tenure will:-

- detract from the value of sites, making trading meaningless;
- stifle investment in the industry;
- reduce competitiveness with other producers;
- devalue existing businesses.

It is reasonable that beekeepers have enough tenure to recoup the cost of sites purchased, to allow reasonable levels of investment in their business and to secure loans capable of being repaid within the permit period. Longer tenure will facilitate trading and add value to permits.

An approach could be taken similar to the CALM Commercial Activity Regulations, whereby a licence is issued for up to five (5) years with a renewal for a further five (5) years, subject to the licensee not being convicted of an offence against the Act or the regulations or having not breached licence condition(s) during the initial period.

Notwithstanding this, CALM needs to retain the power to cancel sites for management and nature conservation reasons. The State needs to outline clear criteria and process where sites are proposed for cancellation. This will provide opportunity for comment and planning for beekeepers and ensure sites are purchased on the basis of current and best available information.

Recommendations:

- A five (5) year permit with a renewal period of a further five (5) year period be recommended to the Minister.
- The Forest Management Regulations be amended to reflect this change.
- Draft guidelines be prepared on the process for cancelling sites.

Implications for Government:

The above recommendations will create consistecy with similar areas of licensing.

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6. *COMPENSATION*

Some beekeepers argue that under a site trading situation, compensation should be payable in the event that a permit is cancelled or forest operations affect their honey production. Beekeepers have been advised that compensation will not be payable unless beekeepers are willing to purchase sites through an open competitive process with the resultant proceeds used to create a compensation fund.

Only six (6) out of sixteen (16) submissions supported compensation. It is clear that beekeepers are not so concerned about compensation as long as they do not lose their sites, adequate security is available and their livelihood is protected.

If unrestricted site trading and the current ownership of sites is maintained as recommended, apiary sites will attain an immediate monetary value. In affect beekeepers will be handed a valuable asset for no capital outlay.

It would be naive of beekeepers to expect that government should fund compensation for cancelled sites (or sites disturbed by CALM forest operations) after foregoing the opportunity to realize substantial revenue from declaring existing sites vacant and calling for their sale by tender or auction.

The current Regulations (80(1) and 80(3) expressly exclude the payment of compensation if a permit is cancelled:

- because the site is required for forestry purposes;
- or for any purpose of public utility or convenience;
- or is not being used to its best advantage.

The Regulations also exclude compensation for damage arising from the carrying out of the following operations:

- felling, cutting and removal of timber and other forest produce from the site;
- the construction or maintenance of firebreaks by clearing, burning or any other method:
- the carrying out of managed burning operations by the Department on the site or elsewhere.

These regulations should be retained and improved to protect the State against claims for compensation.
The introduction of proprietary rights for permits could evoke challenges to these regulations by beekeepers whose business may be affected by forest operations after outlaying funds to purchase a site(s). It is unfortunate that the matter of proprietary value of licences is not being coordinated at an all of government level. The current piecemeal approach makes it difficult to develop a clear agency perspective.

In respect to the submissions received, some beekeepers expressed the following concerns:

- the denial of compensation will limit the value of sites;
- longer tenure is required to balance the denial of compensation;
- compensation should be payable if beekeepers are totally excluded from Crown land as a result of changes in government policy.

The argument to continue to deny compensation is further strengthened by possible outcomes arising from the proposed amendments to the CALM Act (CALM Amendment Bill 1999). The proposed amendment requires the Department of Conservation to give affect to submissions by the Minister for Forest Products to a management plan in respect to State forest and timber reserves and the Minister for Water Resources in respect to a public water catchment area. In the event that either Minister submitted that apiary sites should be removed from areas of State forest or a public water catchment area, the absence of Regulations excluding compensation could make the Department of Conservation liable for that compensation.

The consultants review recommended that regulation 80 be retained as the public benefit was, in their view, best served by retaining this restriction.

Recommendations:

- Retain in principle the existing regulations relating to compensation subject to a later review of the regulations in light of the CALM Act Amendment Bill and the Forest Products Bill;
- CALM consult with the Forest Products Division in respect to any proposed changes to these Regulations.

7. *RENTAL ZONES*

The discussion paper raises the possibility of creating additional rental zones. This idea recognizes that some areas are more highly valued by beekeepers than others and that in the absence of a royalty a higher rental for higher producing areas could be applied. (Note: rental zones could be abolished entirely if it was possible to develop a royalty based on production. Unfortunately as identified in 4 above this is not possible).

The proposal met with very little support from the industry. Only four (4) submissions supported the proposal whilst thirteen (13) opposed the proposal. The main concerns were:

- the current two zone system works well;
- annual production would vary depending on climate variations making the system difficult to implement fairly;
- identifying equitable boundaries would be difficult;
- developing a formula that combines rental and production would be difficult.

There is more support for reviewing the apparent anomalies in the current 2 zone boundary. While this is true there are some areas (Northern Sandplain) where the value of the sites far exceeds the current value of the rental. Beekeepers in other less productive sites are effectively subsidising beekeepers with sandplain sites.

With the exception of the Northern Sandplain, it would be difficult to mount a strong case for the introduction of new zones. Because the most likely royalty system that could be applied does not relate to production it would be possible to introduce both a royalty and a new zone north of Perth.

The current low rental for the remote zone ($12 per site per annum) is counterproductive because of the following issues:

- diverting beekeeping effort into marginal areas;
- diverting beekeeping effort into areas where beekeeping has not previously occurred;
- favoring less efficient beekeepers that would not otherwise remain in the industry;
- causing some beekeepers to collect and horde remote zone sites;
- greater reliance on remote sites is increasing production costs and placing pressure on CALM not to increase rentals.

The advantages of increasing the rental in the remote zone include:

- less productive sites would be relinquished to CALM;
- CALM would retain a pool of sites in remote areas;
- pool sites would assist in relocating some beekeepers from sensitive areas;
- pool sites would be taken up only when good flows occurred;
- beekeepers would save on rental and production costs.

Recommendations:

- Develop a new zone for the northern sandplain in consultation with the industry and set a rental commensurate with its value.
- Review the remainder of the current boundary.
- Increase the rental in the remote zone in consultation with the industry.
- Review the rental of the SW Zone in line with CPI and cost recovery guidelines.

Implications for Government:

The above recommendations will generate opposition from beekepers currently holding sites in the northern sandplain area.

8. *RENTALS*

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There is strong support for the rentals to continue to be set by the Minister for the Environment.

CALM currently achieves around 90% cost recovery on apiary site management inclusive of administration and field operations. The beekeeping industry recognizes that full cost recovery of fees is required. The application of higher rentals in the remote zone and the Northern Sandplain is likely to achieve overall full cost recovery.

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The level of cost recovery will be reduced significantly if the Treasury proposal to introduce a Capital User Charge (CUC) is implemented. While the implications of a capital user charge extend well beyond fees for the beekeeping industry, further consultation is required if this proposal eventuates.

Recommendations:

- Rentals be reviewed as recommended in 7 and forwarded to the Minister for approval.
- Provide advice to government on the impact of CUC on apiary sites rentals as required.

9. *CALM ACT AND REGULATIONS*

The Forest Management Regulations are outdated and incapable of properly meeting CALM's obligations to provide effective management of beekeeping on Crown land and CALM managed land. Subject to your agreement with the recommendations of this report and Cabinet's endorsement of ERM's Legislation Review Report, substantial changes to the Regulations appear necessary.

It is now apparent that the Forest Management Regulations do not apply to beekeeping in national parks, nature reserves and conservation parks. This anomaly needs to be rectified at the earliest possible opportunity.

The proposed Forest Products Commission will need to amend or replace the Forest Management Regulations in respect to regulating the commercial aspects or forest products. It is now an appropriate time to revise the apiary regulations to cover all tenures of CALM managed land and Crown land. This will overcome some of the current anomalies and provide a consistent approach to regulating beekeeping on public lands.

Recommendation:

- In consultation with the industry, review and amend or replace as appropriate the regulations for the management of beekeeping on public lands.