



Australian Government
Productivity Commission

Regulation of Australian Agriculture

Productivity Commission Issues Paper

December 2015

The Commission has released this issues paper to assist individuals and organisations to prepare submissions.

It contains and outlines:

- the scope of the inquiry
- the Commission's procedures
- matters about which the Commission is seeking comment and information
- how to make a submission.

The Issues Paper

The Commission has released this issues paper to assist individuals and organisations to prepare submissions to the inquiry. It contains and outlines:

- the scope of the inquiry
- the Commission's procedures
- matters about which the Commission is seeking comment and information
- how to make a submission.

Participants should not feel that they are restricted to comment only on matters raised in the issues paper. The Commission wishes to receive information and comment on issues which participants consider relevant to the inquiry's terms of reference.

Key inquiry dates

Receipt of terms of reference	20 November 2015
Due date for submissions	12 February 2016
Release of draft report	May 2016
Draft report public hearings	End May – early June 2016
Final report to Government	19 August 2016

Submissions can be made

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The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au).

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1 About this inquiry

This inquiry is about the regulation of Australian agriculture.

The Australian Government has asked the Productivity Commission (the Commission) to undertake an inquiry into the regulatory burden on farm businesses, with a focus on regulations that have a *material impact* on the competitiveness and productivity of Australian agriculture. The terms of reference for the inquiry are provided in attachment A.

Improving the efficiency and effectiveness of the regulatory environment is important for all sectors of the Australian economy, but particularly for the agriculture sector given its high dependence on international markets. Around two-thirds of Australia's agricultural production is exported (DFAT 2015). Unnecessarily burdensome regulation can weigh heavily on farm businesses and undermine the agriculture sector's competitiveness. The National Farmers' Federation has suggested that:

The administrative and cost burden to comply with and carry on business in the agricultural sector are significant. Challenges to maintain competitiveness on farm are already substantial ... The problem becomes compounded when unnecessary regulatory burdens are imposed on industry. (NFF 2013, p. 4)

While Australia's agricultural output has continued to grow over the past two decades, its share of overall economic activity and employment has declined (in part because of the more rapid relative growth in the services and mining sectors). Australia's share of global agricultural production has also declined, largely as a result of rising agricultural output among some developing economies.

Regulation can be of benefit to the agriculture sector (and the community more broadly) where it meets economic, social and/or environmental objectives, and is designed and implemented efficiently and effectively. For example, regulation can assist in building confidence in the quality of Australian agricultural products while also providing consumers with information about food products.

However, where regulation is excessive or unnecessarily burdensome, it can raise costs to businesses, users and consumers, which in turn can reduce economic activity, inhibit trade or restrict competition. As an Australian Bureau of Agricultural and Resource Economics and Sciences report put it:

Although some regulations benefit farmers, other regulations, which are unnecessarily burdensome, complex or redundant, can constrain productivity, growth and impose heavy costs on farm businesses. (Gray, Oss-Emer and Sheng 2014, p. 31)

Reform which improves the efficiency and effectiveness of agricultural regulation is not only important for businesses, but also has the potential to reduce prices for consumers and improve Australia's living standards and economic growth.

Regulatory burdens can have a significant and disproportionate impact on small businesses. This is largely because small businesses have a narrower revenue base over

which to spread what are frequently fixed compliance costs. They may not have the in-house capacity to keep up with regulatory changes unless the regulations are clear, simple and well-communicated. While agricultural production has become increasingly concentrated in large farms in recent decades, most Australian farms are small. Just over half of Australia's farms had an estimated value of agricultural operations of less than \$100 000 in 2010-11 (ABS 2012). Because Australia's agriculture sector is structured around small farm businesses, removing unnecessary regulatory burdens is important for the competitiveness of the sector.

More detail on what the Commission has been asked to do

The inquiry's terms of reference specifically ask the Commission to:

- indicate priority areas for removing or reducing unnecessary regulatory burdens on farm businesses
- identify where there is greatest scope to pursue regulatory objectives in more efficient ways
- identify unnecessary restrictions on competition
- assess whether the current level at which matters are regulated is appropriate and if better coordination across governments would reduce unnecessary overlap
- look at whether Australia's farm export competitiveness could be improved by minimising duplication between domestic regulation and the requirements of importing countries
- examine whether regulatory approaches adopted in other countries might be relevant for Australia.

The Commission has also been asked to take into consideration regulatory concerns raised in the white papers on agricultural competitiveness and developing northern Australia. Many of the issues raised by stakeholders to the Agricultural Competitiveness White Paper related to regulation applied at the state, territory and local government level, in the areas of transport, environmental protection, native vegetation, land tenure and animal welfare. Issues raised in both white papers are further discussed in section 3.

What is (and is not) in the scope of this inquiry?

The focus of this inquiry is regulations at all three levels of government that are specific to, and that have a material impact on, farm businesses. Regulations imposed along the supply chain (including regulations introduced to meet the requirements of international markets) are also within scope.

The following areas are considered to be out of scope:

- *related but distinct primary sectors*, including fisheries and forestry
 - the terms of reference state that the inquiry should not examine regulatory issues affecting marine fisheries and aquaculture as these issues will be investigated as part of a separate Productivity Commission inquiry
 - most aspects of forestry (including Regional Forest Agreements) will not be considered in this inquiry, however, interactions between farm businesses and forestry regulation may be considered where they have a material impact on the productivity and competitiveness of farm businesses
- *non-regulatory policies* (subsidies, taxation and infrastructure), while potentially important for improving the productivity and competitiveness of the agriculture sector, are not regulatory in nature.

While the inquiry will examine water-related regulations that are having a material impact on the productivity and competitiveness of farm businesses, other water policy issues will not be examined in any detail. The Productivity Commission has recently taken over the review functions of the former National Water Commission and will be conducting inquiries (beginning in 2016) on the progress of the National Water Initiative and on the Murray Darling Basin plan and water resources plans.

How can you contribute to the inquiry?

This issues paper is intended to assist participants in preparing a submission. It sets out some of the issues and questions the Commission has identified as relevant at this early stage of the inquiry. There is no need to comment on every issue raised in this paper and participants are welcome to submit material on issues not raised in this paper, provided they are directly relevant to the inquiry's terms of reference. Participants should provide evidence to support their views, including data and specific examples where possible.

Submissions should be provided to the Commission by **Friday 12 February 2016** for consideration in the draft report. Attachment B provides further details on how to make a submission.

Following the receipt of written submissions, the Commission will prepare a draft inquiry report which will be released in May 2016. Interested parties will have an opportunity to comment on the draft report at public hearings and through further written submissions. A final inquiry report will then be prepared and provided to the Australian Government by 19 August 2016. The *Productivity Commission Act 1998* (Cwlth) requires that the Government table the report within 25 sitting days of receipt.

2 The Commission's approach to the inquiry

The Commission's focus, as set out in the terms of reference, will be on identifying regulations (at all levels of government) that impose an *unnecessary* regulatory burden and that have a *material impact* on the domestic and international competitiveness of farm businesses and the productivity of Australian agriculture.

When making an assessment about whether a particular regulation imposes an unnecessary burden and has a material impact on the competitiveness of farm businesses and the productivity of the agriculture sector, the Commission will draw on its own research and analysis, evidence provided by participants, the findings of other relevant reviews and lessons from regulatory approaches adopted in other countries.

The Commission will also take account of factors such as the scale of the regulatory burden relative to the value of Australian agricultural production, the number and size of regulated businesses affected, and if the regulation spans multiple jurisdictions or agricultural industries.

In keeping with its legislative remit, the Commission will take a communitywide, evidence-based and transparent approach to assessing the costs and benefits of reform options.

Defining regulation

'Regulation' is defined as any laws (Acts of Parliament, regulations and other legislative instruments) or other government rules (such as codes of conduct and standards which are known as quasi-regulation) that influence or control the way people and businesses behave (PC 2011).

Regulation is put in place to meet a range of economic, social and environmental goals. Often regulation is introduced to make markets work more efficiently, including to address market failures such as inadequate information or where production or consumption generates spillover costs or benefits on others. Unless corrected for, market failures can result in over- or under-production of goods, and distorted consumption and production decisions. The National Farmers' Federation has acknowledged the importance of regulation to the Australian agriculture sector.

[W]hile regulation can be onerous to comply with, we also recognise that in many instances there is sound reasoning behind why it has been imposed. ... Not all regulation is bad for Australian farmers, and in many instances it has ensured that Australian agriculture can build on its global competitiveness in a sustainable manner. (NFF 2013, p. 7)

The existence of a market failure is insufficient to justify regulation — a necessary condition is that the regulation not only addresses a market failure, but also that the benefits of regulation outweigh the costs of implementing and complying with the regulation.

Regulation may also be put in place to respond to community preferences. Even then, however, regular review is essential to ensure that the regulation is efficiently addressing community preferences, which can change over time. With this in mind, in examining regulation, the capabilities and methods of regulators will be a relevant consideration.

Unpacking the costs of regulation and ‘unnecessary burdens’

Regulations by necessity impose costs on those affected, including businesses. Where the objectives of regulation are sound, and it is effectively designed and implemented, the benefits of regulation would be expected to outweigh the costs for the community as a whole. Good regulation also achieves its stated policy objectives at least cost to the community.

A key question for this inquiry is whether a regulation, and the way it is implemented, imposes an *unnecessary* regulatory burden. An unnecessary regulatory burden would exist if it was possible to achieve the objective of the regulation at a lower cost (compliance and administrative costs and lower distortion to the economy).

Some of the ways in which unnecessary burdens can arise include:

- excessive regulatory coverage, including regulatory creep — where the regulation covers more activity than was intended or warranted, or where the reach of regulation has become more extensive over time
- redundant regulation — regulation can become ineffective or unnecessary with changes in circumstances or technology
- excessive reporting or recording requirements, including demands for information from different arms of government
- heavy-handed regulators (or regulatory forbearance)
- inconsistent or overlapping reporting requirements, either within government or across jurisdictions, which can generate confusion and extra work for businesses than would otherwise be the case (PC 2007, 2011).

Regulations with sound objectives can also sometimes have unintended economic or social effects and can cause businesses to adjust their production decisions and processes. They may also inhibit innovation and competition or reduce incentives to improve business productivity.

Where possible, the Commission will seek to quantify the costs and benefits of policy reforms. Therefore, it would be useful for inquiry participants to quantify the cost of unnecessary burdens in dollar terms. As discussed above, only part of a regulation’s cost to businesses and others will be *unnecessary*, if the regulation is designed and applied efficiently.

The Commission will also consider reform options to address identified unnecessary burdens. As part of its assessment, the Commission will consider potential risks that may arise with reform options. It will be important that any proposed reforms do not simply shift costs from farm businesses to governments or other sections of the community. To recommend a regulatory reform, the Commission will need to be convinced that it will generate a net benefit to the community as a whole.

Information request

The Commission is seeking data and information on unnecessarily burdensome regulations that materially affect the competitiveness of farm businesses, including:

- *the costs imposed on farm businesses by the regulation. For example:*
 - *the costs of materials and equipment purchased to meet regulatory requirements*
 - *the time and costs devoted to complying with regulations, such as paperwork, reporting to regulators (including complying with inspections), and training of staff*
 - *opportunity costs in terms of the value of foregone sales and any added costs from using less preferred inputs, production processes or technologies.*
- *inconsistent and/or overlapping regulations between jurisdictions or levels of government*
- *regulation that has a particular effect on certain types of farm businesses, or on businesses in certain locations*
- *the scope to enhance the benefits of regulation*
- *effective regulatory approaches used overseas, or in parts of Australia, that could be adopted more broadly*
- *areas of regulation that are the highest priority for reform, and which level of government should be responsible for the regulatory arrangements.*

Considering the collective burden of regulation

The Commission recognises that there could be many regulations which in isolation have a relatively minor effect on farm businesses, and so may not otherwise be a focus for the inquiry, but collectively impose a material unnecessary burden.

Such an outcome could be evidence of a systemic problem with government processes and institutions that determine when regulation is used, and how it is designed and implemented. Historical regulatory developments and artefacts can also mean that some regulation is no longer relevant or required. A key principle in the Australian Government Guide to Regulation is that policymakers consult with each other to avoid creating cumulative or overlapping regulatory burdens and that regulations be periodically reviewed to test their continuing relevance (PM&C 2014). Australian governments are also working to reduce or remove overlapping regulations, for example, through the creation of ‘one-

stop shops' for the assessment and approval of projects under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

Questions

- *Are there systemic problems with government regulatory processes and institutions which create unnecessary regulatory burdens on farm businesses?*
 - *What reform options might improve these processes and institutions?*
-

3 Farm businesses and regulation

Farm businesses can face a range of often complex and overlapping regulations. At each stage of the agricultural supply chain there are regulations in place (table 1), including for:




- acquisition, leasing and preparation of land (including restrictions on land use)
- the operations of cropping, horticulture and animal husbandry
- on-farm processing operations
- transportation of product to market
- marketing and sale of product (PC 2007).

Regulations that cover farming businesses apply at all levels of government. The Australian Government is mainly involved in regulating national and interjurisdictional issues, including, for example, the regulation of agricultural and veterinary chemicals, biosecurity, imports and exports. A 2013 report by the Australian Bureau of Agricultural and Resource Economics and Sciences found that rural businesses were governed by around 90 Acts administered by the Australian Government agriculture portfolio alone (Gibbs, Harris-Adams and Davidson 2013). Additional Commonwealth legislation and regulation directly affecting farm businesses include, among others, those from the environment, treasury, immigration and industry portfolios. The states and territories also have regulations in the areas of transport, environmental protection, native vegetation management, land tenure and land use. AgForce Queensland (2012) found that at a state level, Queensland farm businesses were regulated by over 55 Acts and regulations.

Regulations covering some areas, such as environmental protection, are covered by all three levels of government. There are also other regulations, such as those around temporary labour and water use, that affect a range of businesses across the economy, but are of particular concern to some farm businesses.

Some specific areas of regulation that affect Australian farm businesses, and that have been raised as areas where there are unnecessary regulatory burdens, are discussed in the following sections. Questions are posed in each of the areas to help participants prepare their submissions.

Table 1 Regulation across the agricultural supply chain^a

<i>Key Australian Government involvement/regulation</i>	<i>Key stages of agricultural cycle</i>	<i>Key state/territory government involvement/regulation</i>
<ul style="list-style-type: none"> • native title • environmental protection <ul style="list-style-type: none"> – biodiversity conservation – natural, cultural and world heritage – climate change 	Acquisition, leasing and preparation of land 	<ul style="list-style-type: none"> • land tenure and use • land use and planning • building regulations • pastoral leases • environmental protection • native vegetation • natural and cultural heritage
<ul style="list-style-type: none"> • biosecurity <ul style="list-style-type: none"> – pest surveillance – export control • environmental protection <ul style="list-style-type: none"> – biodiversity conservation – natural, cultural and world heritage – climate change – national pollutant inventory • national land transport regulatory frameworks • water access and regulation • welfare of exported animals 	Agricultural production and on-farm processing 	<ul style="list-style-type: none"> • agricultural and veterinary chemicals • animal welfare • biosecurity • food certification for export • pest and disease control and response • building regulations • genetically modified crops • land use and planning • livestock regulation and identification • transport • land transport regulations • road access • transport and use of machinery • vehicle and machinery licensing • water access and regulation
<ul style="list-style-type: none"> • biosecurity <ul style="list-style-type: none"> – pest surveillance – export control • national land transport regulatory frameworks • shipping and maritime safety laws • welfare of exported animals 	Transport and logistics 	<ul style="list-style-type: none"> • land transport regulations • road access • transport and use of machinery • vehicle and machinery licensing • animal welfare • livestock regulation and identification
<ul style="list-style-type: none"> • food labelling • food standards • biosecurity <ul style="list-style-type: none"> – pest surveillance – export control • welfare of exported animals 	Marketing	<ul style="list-style-type: none"> • food safety • food packaging • biosecurity • food certification for export • pest and disease control and response

^a There are also a range of issues and regulations that affect all stages of the agricultural supply chain. Cross-cutting issues include investment opportunities and access to capital, as well as regulations relating to competition, foreign investment, immigration, industrial relations, occupational health and safety, and taxation.

Source: Adapted from PC (2007).

Land tenure and use

Agriculture takes up 52 per cent of Australia's land mass (ABS 2014). Agricultural production takes place on both private (freehold) land and Crown land (under leasehold). Land use is regulated through a range of mechanisms, including planning and zoning regulations and pastoral leases. Land use regulation can:

- confine certain types of land use to areas where they are less likely to adversely affect others
- restrict activities that affect the long-term economic and environmental viability of the land
- be used to manage land for public purposes, such as the coordination of community services and to preserve the environment.

Land use planning

State, territory and local governments are responsible for regulating private land use through legislation, state and regional plans, strategies and policies, and local planning schemes, which include zones and development standards. Land use regulation has the potential to facilitate improvements in the productivity of the land, but poorly applied regulation can impose an unnecessary burden. Some of the concerns raised about agricultural land use regulation include:

- complex and time-consuming development assessment and approval processes, which can harm investment and impede expansion (ACMF 2014; Chappell 2014)
- different development assessment and approval processes between regions, policy areas and levels of government, which can make it difficult for farmers to understand their obligations (VFF 2014)
- the mix of options for the management of land use conflicts, particularly between agriculture, gas operations and residential uses, including policies governing land access and use, compensation arrangements, national frameworks and strategies and right-to-farm laws (Griffith 2015; PC 2015b; PIRSA 2013)
- the degree of prescriptiveness of zones, which may prevent the diversification of on-farm activities into areas such as processing, tourism and retail (PC 2012).

Questions

- *How could development assessment and approval processes be improved?*
 - *Do different development assessment and approval processes result in unnecessary regulatory burdens?*
 - *Are there inconsistencies between land use regulations and other regulations? What is the evidence for this?*
 - *Do the benefits of regulations that restrict land use to agriculture activities outweigh the costs?*
 - *Is there scope for zones to allow a broader range of complementary land uses, while still preserving agricultural interests and recognising essential land management or conservation purposes?*
-

Pastoral leases

A lot of Australia's agricultural land is Crown land held by the public under long-term pastoral leases with state and territory governments. While the terms of pastoral leases differ across states and territories, some commonly raised issues include that:

- there are impediments to the diversification of farming activity, including limits on the type and amount of alternative activities (such as tourism or horticulture) that can occur under pastoral leases (Australian Government 2015b; Legislative Council of Western Australia 2014)
- lack of security of tenure can act as an impediment to lending and investing in infrastructure (WA Department of Lands 2013)
- permits for alternative activities under pastoral leases may not be registrable on the lease and therefore not transferable if the lease is transferred (Australian Government 2015b).

Lease arrangements that unnecessarily impede the emergence of non-pastoral activities or investment in infrastructure and agriculture, could stifle innovation and competition and preclude potential economic and social gains for farmers and the wider community.

Questions

- *Is diversification of agricultural activity unnecessarily restricted by conditions in pastoral leases?*
 - *Is pastoral leasehold an effective way of facilitating efficient land use? What other approaches could be used?*
 - *What implications (if any) does the security of tenure of pastoral leases have for lending or investment?*
 - *What are the highest priority reforms for improving pastoral lease arrangements?*
-

Native title

Native title recognises the interests and rights of Indigenous people in relation to land, and can include the right to the possession, use and occupation of land or the right to access land for particular purposes (Kimberley Land Council 2014). Across Australia, native title is claimed over a large portion of Crown land (National Native Title Tribunal 2015). As a result, the use of this land for agricultural purposes may be subject to native title interests.

Native title legislation creates a framework for resolving native title claims and managing conflicting land uses on Indigenous land. Some stakeholders to the White Paper on Developing Northern Australia observed that the costs and time delays associated with native title processes can make some developments unviable. It was also observed that unresolved native title claims can mean that property rights are uncertain, making negotiations relating to future land use more likely to break down (Australian Government 2015b).

Questions

- *How well are native title processes managed?*
 - *How do native title processes affect decisions relating to current or future land use?*
 - *What scope exists to reduce any unnecessary burden imposed by native title processes and how should regulation be reformed to give this effect?*
-

Environmental protection

All levels of government have regulations which are designed to conserve biodiversity, protect the environment or promote the sustainability of soils, waterways and ecosystems. For example, they include:

- the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth)
- state and territory laws relating to natural and cultural heritage; air, water and noise pollution; and waste and resource recovery
- state and territory native vegetation regulations and associated policies (including those relating to risk assessment and to the use of offsets)
- policies relating to climate change and carbon emissions reduction.

Environment protection regulations can affect farm businesses. For example, some agricultural activities, such as land clearing, can require government approval. Land use limitations, access to water, feral animal control, noise and fumes in peri-urban locations and controls on pesticide use all may be imposed via environmental legislation. In the context of the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), some matters of national environmental significance may also be relevant to farmers.

Current reform efforts include the creation of one-stop shops for environmental approvals designed to reduce costs associated with project approvals and administration. An important question for this inquiry is whether it is possible to further reduce the burden of environmental protection regulation on farm businesses while maintaining desired environmental standards.

Questions

- *What excessive and unnecessary costs do environmental protection regulations impose on farm businesses?*
 - *Do environmental protection regulations particularly affect certain businesses or businesses in certain locations?*
 - *Can the burden imposed by environmental protection regulations be reduced by changing the regulations or the way they are administered?*
 - *Are there more effective approaches to environmental protection adopted overseas, or in other parts of Australia, that should be considered?*
-

Access to technologies and chemicals

Technologies (such as robotics, smart phone applications and biotechnology) and agricultural and veterinary (agvet) chemicals can increase agricultural productivity by improving resource use, producing higher yields and reducing production costs. They can also increase the quality of agricultural products. Governments regulate access to agvet chemicals and some technologies to minimise the associated risks to human health and the environment. Limits on the agricultural use of particular technologies and agvet chemicals can also enhance Australia's reputation for producing clean and green food and fibre.

Technologies

In recent years, restricted access to genetically modified (GM) crops stemming from moratoriums on GM crops in some states has been the subject of debate. For example, South Australia, Tasmania and the Australian Capital Territory have imposed a moratorium on GM crop cultivation. This is despite similar moratoria being lifted in other jurisdictions. A number of GM crops have also been approved for release by the Australian Government regulator (the Gene Technology Regulator).

GM crop restrictions may benefit some farm businesses (such as those growing organic products). However, concerns have been raised in several forums, including in submissions to the Agricultural Competitiveness White Paper, about these restrictions imposing broader costs on Australian agriculture and the community by:

- limiting the adoption of new agricultural biotechnologies and discouraging innovation

-
- imposing additional costs on farm businesses operating across jurisdictions (AusBiotech 2014; Gibbs, Harris-Adams and Davidson 2013).

Concerns have also been raised about overlapping responsibilities and processes across agencies involved in regulating GM crops, lengthy decision making by state and territory governments, and high approval costs (Gibbs, Harris-Adams and Davidson 2013; NFF 2013; Producers Forum 2014).

Questions

- *What are the benefits and costs of some jurisdictions specialising in GM free products relative to widespread cultivation of GM crops?*
 - *How do GM crop moratoria affect investment in Australian agriculture and the ability of domestic farmers to compete internationally?*
 - *What types of regulations are likely to be more effective than moratoria in addressing any risks associated with GM crops? What overseas examples of GM regulation should the Commission examine?*
 - *Is the approval process for GM crops effective and efficient? If not, how can it be improved?*
-

Agricultural and veterinary chemicals

The Australian Government (through the Australian Pesticides and Veterinary Medicines Authority (APVMA)) undertakes the evaluation, registration and approval of agvet chemical products, and state and territory governments regulate their use after retail sale (DoA 2014).

The Australian Government has recently implemented reforms to improve the consistency, efficiency, timeliness and transparency of the regulatory system (including by reforming the APVMA's processes), but consultations for the Agricultural Competitiveness White Paper (Animal Medicines Australia 2014; Australian Government 2015a) and a previous review of regulatory burdens on agricultural businesses (Gibbs, Harris-Adams and Davidson 2013) raised a number of concerns. These include:

- regulation that is sometimes disproportionate to the risks agvet chemicals pose and the APVMA not taking into account assessments conducted by overseas regulatory agencies
- inconsistencies between states and territories in regulation after the point of sale, such as for 'off-label uses' — use on pests, crops and situations different to those labelled.

Regulatory arrangements that are disproportionate to risks can place an unnecessary regulatory burden on Australian farmers seeking to access productivity-enhancing agvet chemicals.

Questions

- *Does the regulatory system for agvet chemicals effectively align regulatory effort with risk? How can a better system be achieved?*
 - *Is there scope for Australian regulators of agvet chemicals to recognise the tests and standards developed by their overseas counterparts?*
-

Water

Farm businesses use water for diverse purposes such as watering crops through irrigation and feeding livestock. Constraints on the availability and cost of water can impose unnecessary costs on farmers and limit agricultural output and productivity, especially during droughts. Such constraints can include institutional impediments to water trading, over-allocation of water systems, and poorly designed water property rights.

A number of recent reviews of water arrangements and submissions to the Agricultural Competitiveness White Paper highlighted a range of water-related regulatory problems affecting Australian agriculture (for example, Australian Government 2015b; AWA 2014; Commonwealth of Australia 2014; NWC 2012, 2013). Concerns raised relate to:

- *information provision*, including the transparency, quality, timeliness and communication of information in water markets and information on the connection between groundwater and surface water
- *water trading*, including urban–rural water trade, the allocation of water entitlements and development of water markets in Northern Australia, the role of water brokers and the treatment of water market speculators, and underdeveloped ground water markets
- *water access and management*, including water recovery targets and the allocation of responsibilities across different tiers of government for water management in the Murray Darling Basin, and planning processes in Northern Australia.

Questions

- *Are there aspects of the water market that are imposing an unnecessary regulatory burden on farm businesses? If so, what are they?*
 - *What aspects of water regulation are having a material effect on the competitiveness of farm businesses and the productivity of Australian agriculture?*
-

Transport

Given the rural location of a lot of agricultural production across Australia, the transport system is central to the competitiveness of farm businesses. Various modes of transport are subject to regulation. Transport regulation is aimed at addressing a range of issues, including competition, public safety, amenity, and the protection of public infrastructure.

In Australia, the majority of agricultural goods are transported via road using heavy vehicles (Tulloh and Pearce 2011). Moves towards national heavy vehicle regulations and a single regulator have been aimed at lessening compliance burdens, reducing duplication and inconsistency between states and territories, and facilitating cross-border operations. While progress continues to be made (NHVR 2015), concerns remain.

- Stakeholders argue that the *Road Safety Remuneration Act 2012* (Cwlth) — which restricts unsafe work practices — duplicates other regulations and has not led to safety improvements (ALC 2013; NFF 2014b; Retailer and Supplier Roundtable Ltd 2014).
- Western Australia and the Northern Territory are yet to commence the *Heavy Vehicle National Law Act 2012* (Qld) (HVNL), partly due to the restrictiveness of access conditions and the impracticality of the national fatigue management system (Gardner 2015; NT Department of Transport 2014).
- States and territories are permitted to have their own derogations from the HVNL, potentially creating inconsistencies that may force operators to resort to a ‘lowest common denominator’ approach in employing a vehicle combination that meets the requirements of all jurisdictions (ALC 2010).
- The HVNL recognises local governments as road managers. Local restrictions on road access for some heavy vehicles may adversely affect agricultural productivity (Retailer and Supplier Roundtable Ltd 2014).

Reforms to reduce regulatory inefficiencies in other transport sectors are occurring at different rates. The Competition Policy Review (Harper Review) found that rail access regimes, though complex, have improved efficiency in the rail freight sector (Harper et al. 2015). Conversely, proposed legislation (Shipping Legislation Amendment Bill 2015) to improve competition in coastal shipping, by streamlining regulatory requirements for foreign ships, has been rejected by the Senate. Regulatory barriers to competition and a lack of investment in ports and air services have also been raised as issues that affect efficient access to these transport modes (ALEC 2014; Harper et al. 2015; NFF 2014a).

Questions

- *Do transport regulations impose unnecessary burdens on agricultural producers?*
 - *Are there transport regulations that duplicate or are inconsistent with other regulations?*
 - *Would alterations to the HVNL offer material benefit in terms of reducing regulatory burden on farmers? At what cost?*
 - *How could access decision-making by road managers be improved to allow freer movement of agricultural produce?*
 - *Is there scope to reduce the burden of rail, port or air freight transport regulations on farmers?*
 - *Are there aspects of coastal shipping regulation that are an unnecessary burden on farm businesses?*
-

Animal welfare

Animal welfare regulations are in place to ensure that community expectations for the humane treatment of animals are met. Regulations relating to animal welfare apply at both the Australian, and state and territory government levels. There are suggestions that complying with multiple, inconsistent, regulatory regimes for animal welfare can increase costs for businesses operating across state and territory borders (Gibbs, Harris-Adams and Davidson 2013).

Efforts to move toward national animal welfare standards have been underway since the Australian Animal Welfare Strategy was endorsed in 2004 by the then Primary Industries Ministerial Council. However, concerns have been raised about the speed at which the national standards have been developed (Gibbs, Harris-Adams and Davidson 2013; PC 2007), with further delays occurring following funding ceasing for the Strategy and its coordinating body, the Australian Animal Welfare Advisory Committee, in July 2014.

Regulatory costs for livestock producers may also include requirements to comply with Australian Government regulatory arrangements governing animal welfare for live exports under the Australian Standards for the Export of Livestock and the Exporter Supply Chain Assurance System (ESCAS), which provides for the welfare of exported livestock after arrival in the importing country. The ESCAS has undergone some reforms to streamline auditing and reporting requirements, although a 2015 review identified outstanding inefficiencies in managing non-compliance and in administration (Commonwealth of Australia 2015).

Questions

- *Do existing animal welfare regulations (at the Australian and state and territory government levels) efficiently and effectively meet community expectations about the humane treatment of animals used in agriculture production?*
 - *Do animal welfare regulations materially affect the competitiveness of livestock industries, and, if so, how?*
 - *What are the reform priorities for animal welfare regulations, if any, and have recent reforms, for example in relation to the ESCAS, delivered net benefits to the community?*
 - *How do variations between state and territory animal welfare regulations affect livestock businesses and/or consumers?*
 - *What are the costs and benefits of national animal welfare standards? Are there any barriers to implementing national standards?*
 - *Are animal welfare regulations appropriately enforced?*
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Biosecurity

Australia's biosecurity system seeks to protect Australia from the entry, establishment or spread of harmful pests (including weeds) and diseases. It also aims to maintain Australia's reputation for safe, high-quality produce, which safeguards access to overseas markets.

The Australian Government is responsible for biosecurity activities offshore and at the border, while state and territory governments are responsible for post-border controls. Australia's primary piece of legislation for biosecurity (the *Quarantine Act 1908* (Cwlth)) will be replaced by the *Biosecurity Act 2015* in June 2016. The Biosecurity Act aims to introduce a more flexible, risk-based approach to biosecurity regulation. Biosecurity arrangements are also shaped by regulations in other areas of policy such as food safety and export certification.

Government actions to strengthen biosecurity in Australia can affect the costs and regulatory burdens faced by industry. A conservative approach to import risk assessments can increase the cost of imported agricultural inputs (such as grain for feedlot cattle), but underestimating the biosecurity risks posed by imports can undermine Australia's relative pest- and disease-free status (ALFA 2014). Government processes can influence the timeliness of getting products to market, and cost-recovery arrangements can affect the costs borne by industry — issues particularly relevant for export certification arrangements and biosecurity audits. In addition, differing state and territory regulations can impede trade and the movement of goods within Australia.

In addition to the new Biosecurity Act, other recent reforms to export certification arrangements include meat inspection reforms and a return to full cost recovery for export certification services. The effectiveness of these reforms, along with other proposed reform

opportunities that may decrease burdens on industry while upholding Australia's favourable plant and animal health status, will be considered in this inquiry.

Questions

- *What improvements could be made to government export certification processes?*
 - *Are requirements for biosecurity-related audit arrangements unnecessarily burdensome? Could audits be combined or streamlined?*
 - *Is it likely that the new Biosecurity Act 2015 (Cwlth) will achieve its aims of managing biosecurity risks to an acceptable level, managing the impact associated with biosecurity incidents, and maximising the economic efficiency of the management of biosecurity risks?*
 - *Do risk assessments of imported agricultural inputs effectively balance the need to protect Australia from harmful pests and diseases with the need to minimise the burden on importers?*
 - *Are there useful overseas examples of biosecurity regulation that the Commission should examine?*
-

Consumer-related regulation

Consumer-related regulation, including food safety and labelling regulations, are in place to protect and provide information to consumers and to protect the international reputation of Australia's food products. But consumer-related regulation that imposes excessive compliance burdens on businesses may have unintended consequences (such as higher food prices and less consumer choice).

Food safety

Governments in Australia mandate food safety standards to protect consumers against foodborne illnesses. Outbreaks of foodborne illnesses can also damage the reputation of Australian industries, and can have wider effects in international markets.

The Australia New Zealand Food Standards Code sets national food safety standards, which are implemented through state and territory legislation. States' autonomy in implementing their own legislation allows them to respond to the specific needs of their jurisdictions. However, arrangements that differ unnecessarily can increase compliance burdens for businesses operating across states, or create barriers for businesses wanting to expand across state borders.

Audits are a significant part of Australia's food safety system and are used to verify that standards have been met. If audits are not administered efficiently they can impose unnecessary burdens on businesses.

Submissions to the Agricultural Competitiveness White Paper suggest that there may be scope to reduce the burden of food safety audits, for example by streamlining audits for domestic and export purposes (Australian Dairy Industry Council Inc. and Dairy Australia 2014) or by combining audits for industries that are highly vertically integrated (such as the poultry industry) (Victorian Chicken Meat Council 2012).

Previous reviews into food safety in Australia have also suggested potential avenues for reform, such as limiting the ability of states and territories to vary the national standards, or recognising private sector standards for audits conducted by government agencies (Gibbs, Harris-Adams and Davidson 2013; RRC 2013; SCAFPS 2012).

Questions

- *Are food safety standards proportionate to the risks they are designed to address?*
 - *Are there known examples of best practice process at the state and territory level in dealing with food safety regulation?*
 - *Are there unnecessary differences between state and territory food safety standards and the Australia New Zealand Food Standards Code?*
 - *Do differing state and territory arrangements create unnecessary burdens on farming businesses operating across borders?*
 - *Do food safety audits create an unnecessary regulatory burden? Could food safety audits be streamlined or combined?*
-

Food labelling (including country-of-origin labelling)

Food labels seek to inform consumers about a product's nutritional value, ingredients, allergens and country of origin. Labels can also detail other food characteristics, such as whether the product is organic, free-range, or free of genetically modified material.

Australia's food labelling system comprises the Australia New Zealand Food Standards Code and Australian Consumer Law (contained within the *Competition and Consumer Act 2010*) (FSANZ 2013). The Food Standards Code outlines what information must be provided on labels, while the Australian Consumer Law contains provisions primarily relating to false, misleading or deceptive conduct. Country-of-origin labelling is mandatory in Australia.

Food labels can help consumers protect their health (for example, by avoiding expired food and allergens) and to purchase products that align with their preferences, such as free-range products, or food produced within Australia or in an environmentally friendly way. Mandatory or voluntary labelling can enable producers to enjoy a competitive advantage by exploiting their reputation for producing safe, high-quality food in an ethical and sustainable way (NFF 2014c). However, labelling laws can impose administrative burdens and compliance costs, which may be passed onto consumers in the form of higher prices.

In July 2015, the Australian Government proposed a new country-of-origin food labelling system, which would apply primarily to fresh produce and minimally processed foods (Department of Industry, Innovation and Science 2015a, 2015b). If agreed to by the states and territories, the new system could be implemented by mid-2016 with a phase in period.

Questions

- *Do food labels provide information that is useful for consumers? What aspects of labelling are likely to be most important to consumers?*
 - *What unnecessary burdens do labelling standards impose on agricultural producers?*
 - *Are labelling standards overly prescriptive?*
 - *Are there inconsistencies in labelling requirements?*
 - *Do Australia's truth-in-labelling laws enable agricultural producers to differentiate their products for competitive advantage?*
 - *Are food labelling systems appropriately enforced across jurisdictions?*
 - *What aspect of food labelling should be mandatory rather than voluntary?*
-

Competition regulation

Some regulations, designed in the interest of a particular industry or with another purpose in mind (such as biosecurity), can have a negative effect on competition. For example, the sale of fresh potatoes is restricted in Western Australia (Harper et al. 2015, p. 116). Regulations that restrict competition can impede improvements in productivity and innovation.

Australia has a significant body of regulation — most notably the *Competition and Consumer Act 2010* (Cwlth) (CCA) — to prohibit anticompetitive behaviour. The CCA allows a group of small businesses to apply for an exemption from cartel provisions of the law so that they can collectively bargain, rather than compete, to transact with a large business. The collective bargaining exemption is intended for cases where competition is unlikely to result in the best possible outcome for the community due to a significant imbalance in bargaining power. The use of this option has, however, been limited.

The Harper Review recommended that the notification process for collective bargaining be enhanced and made more flexible. The review also recommended that the maximum value thresholds for notifying a collective bargaining arrangement be examined to ensure they are high enough to include typical small business transactions (Harper et al. 2015).

Both the Harper Review and the Agricultural Competitiveness White Paper found low levels of awareness of the collective bargaining provisions among small businesses (Australian Government 2015a). The Australian Government supported the Harper Review's recommendations relating to raising awareness of the collective bargaining

provisions of the CCA, and in its Agricultural Competitiveness White Paper, committed \$13.8 million to a two-year pilot program to provide farmers with knowledge and materials on collective bargaining, cooperatives and innovative business models.

The CCA can also be used to authorise an enforceable industry code of conduct which shapes market conduct in ways that are thought to be beneficial to community wellbeing. Examples include the Food and Grocery Code of Conduct, Port Access Code of Conduct for Grain Export Terminals, and Horticulture Code of Conduct. An unpublished review of the Horticulture Code of Conduct was completed and delivered to the Australian Government in November 2015 (Department of Agriculture and Water Resources 2015).

Questions

- *Where are the restrictions on competition in the agricultural sector or its supply chains?*
 - *Is competition facilitated or reduced by regulations allowing small businesses to collectively bargain with a large business, or by industry codes of conduct authorised under the Competition and Consumer Act 2010 (Cwlth)?*
 - *What are the likely effects of the changes suggested in the Government's Agricultural Competitiveness White Paper and the Harper Review?*
 - *What areas of regulation which affect competition in the agriculture sector are favourably positioned for reform?*
-

Investment

Australia's attractiveness to both domestic and foreign investors is partly influenced by the regulatory environment in place. Effective regulation can increase investor certainty, but excessive regulatory restrictions can restrict new entrants and the adoption of new technologies or techniques. This can in turn stifle investment, competition and innovation in agriculture.

Australia's foreign investment framework comprises the *Foreign Acquisitions and Takeovers Act 1975* (Cwlth) and associated regulations, and foreign investment policy. The Foreign Investment Review Board is a non-statutory body that advises the Treasurer and the Government on Australia's foreign investment policy and its administration, including screening investment proposals to determine whether they are contrary to the national interest (FIRB 2015a).

A variety of issues have been raised about Australia's foreign investment framework, including:

- the relative restrictiveness of Australia's regulatory system compared to other developed countries, and whether this deters foreign investment (OECD 2014; PC 2015a)

-
- the lack of transparency — particularly the Treasurer’s significant discretionary power and application of the national interest test — which may create uncertainty for investors and expose the process to accusations of discrimination (RRATRC 2013; Sanyal 2014)
 - determining the appropriate foreign investment threshold for screening by the Foreign Investment Review Board, which requires weighing increased compliance costs against the community’s desire for greater scrutiny (The Treasury 2015).

In 2015, changes to the foreign investment framework were announced. These included reductions to screening thresholds for investments in agricultural land and agribusiness, the introduction of a national foreign investment register for agricultural land, and the introduction of application fees (Hockey 2015). The *Register of Foreign Ownership of Agricultural Land Act 2015* and the provisions of the *Foreign Acquisitions and Takeovers Legislation Amendment Act 2015* commenced on 1 December 2015.

Questions

- *Are there regulatory impediments to domestic or foreign investment in agriculture?*
- *What are the costs and benefits of the foreign investment framework for agriculture?*
- *Are foreign investment review processes timely, efficient and transparent?*
- *What are the likely implications for the agriculture sector from the recent reduction in screening thresholds, creation of a national foreign investment register, and the introduction of application fees for proposals of foreign acquisition of agricultural land?*

Other issues

Other government policies and regulations may also affect the competitiveness of farm businesses. For example, poor regulatory frameworks governing electricity markets have contributed to sharp, and in some cases unnecessary, increases in energy costs for dairy farmers (PC 2014). Also, regulatory impediments may prevent increased employment of some temporary workers in the agriculture sector or encourage the use of particular types of visa classes over others (such as the 457 skilled visa, the working holiday visa and the seasonal worker visa). There may also be other regulations that affect businesses in all sectors of the economy that have a large effect on farm businesses.

Questions

- *Are there any other government regulations that reduce the competitiveness of farm businesses and/or the productivity of the agriculture sector? In what way are farm businesses affected?*
 - *Are there other significant regulatory issues affecting farm businesses not directly addressed in this issues paper?*
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Attachment A

Terms of reference

INQUIRY INTO THE REGULATION OF AUSTRALIAN AGRICULTURE

I, Scott Morrison, Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission undertake an inquiry into the regulatory burden imposed on Australian farm businesses.

Background

The Australian Government has identified the agriculture sector as one of the five pillars of the economy. It is promoting the economic potential of the sector by removing unnecessary regulatory burdens and promoting improved productivity and global competitiveness.

The Australian Government's deregulation agenda has focussed on reducing Commonwealth red tape. As part of its deregulation agenda, the Government is implementing reforms in agricultural and veterinary chemicals, biosecurity and export certification. However, there is an opportunity for better national outcomes for the agriculture sector by considering regulation at all levels of government. This is particularly applicable in the areas of transport, environmental protection, native vegetation management, land tenure, animal welfare and food safety in which the states and territories have significant responsibility.

While regulation targets valid objectives, such as protecting consumers from unsafe food, protecting the environment or supporting the export of goods, poorly implemented and administered regulation and the cumulative impact of regulation can have adverse effects on farm businesses. It can unnecessarily restrict farm management decisions and reduce investment.

Inconsistent and overlapping regulations between jurisdictions can also create adverse effects and raise costs for farm businesses.

Scope of the inquiry

The inquiry will focus on regulation with a material impact on domestic and international competitiveness of farm businesses and the productivity of Australian agriculture. The inquiry will define priority areas for removing or reducing unnecessary regulatory burdens where doing so will/can contribute to improved productivity for farm businesses as well as the wider economy.

The inquiry will also review regulation of farm businesses to identify unnecessary restrictions on competition.

While focused on the impact of regulation on farm businesses, the inquiry should also consider the material impact arising from regulation imposed along the supply chain such as regulations introduced to meet the requirements of international markets.

Consistent with its legislative remit, the Commission is to have particular regard to:

- areas of regulation that directly affect farm businesses, including those identified as areas of concern through the white papers on agricultural competitiveness and northern Australia. This includes regulatory arrangements affecting access to new technologies, investment opportunities, land tenure, relevant environmental protection and native vegetation laws, animal welfare and the Exporter Supply Chain Assurance System
- areas where there is greatest scope to reduce unnecessary regulatory burden and pursue regulatory objectives in more efficient (least cost) ways
- whether the current level at which matters are regulated (national, State and local) is appropriate and whether there is scope for better coordinated action across governments to reduce unnecessary overlap
- whether Australia's farm export competitiveness can be improved by minimising duplication between domestic regulation and importing country requirements
- relevant regulatory approaches adopted in other countries.

Specific requirements

In undertaking the inquiry, the Commission should:

- identify specific areas of regulation that are unnecessarily burdensome, complex or redundant
- identify priority areas for regulatory reform
- provide recommendations to alleviate regulatory burden identified.

For the purposes of this inquiry, the regulatory issues affecting:

- marine fisheries and aquaculture industries will be investigated as part of a separate Productivity Commission inquiry into the Regulation of Australian Marine Fisheries and Aquaculture Sectors.

Process

The Commission is to advertise nationally, consult with key interest groups and affected parties, hold hearings, invite public submissions and release a draft report to the public.

To expedite the review the Commission should consider relevant submissions to the white papers on agricultural competitiveness and Northern Australia and other relevant material in the public domain.

The final report should be provided within nine months of the receipt of these Terms of Reference.

S. MORRISON
Treasurer

20 November 2015

Attachment B

How to make a submission

The Commission invites interested people and organisations to make a written submission.

Each submission, except for any information supplied in confidence (see below), will be published on the Commission's website shortly after receipt, and will remain there indefinitely as a public document. The Commission reserves the right to not publish material on its website that is offensive, potentially defamatory, or clearly out of scope for the inquiry or study in question.

When providing a submission to the Commission, you may wish to remain anonymous or use a pseudonym. Please note that, if you choose to remain anonymous or use a pseudonym, the Commission may place less weight on your submission.

Copyright in submissions sent to the Commission resides with the author(s), not with the Commission. Submitters should ensure that they hold copyright in any submitted documents, or that the copyright holder has authorised the publication of any relevant documents on the Commission's website.

How to prepare a submission

Submissions may range from a short letter outlining your views on a particular topic to a much more substantial document covering a range of issues. Where possible, you should provide evidence, such as relevant data and documentation, to support your views.

This is a public review and all submissions should be provided as public documents that can be placed on the Commission's website for others to read and comment on. However, information which is of a confidential nature or which is submitted in confidence can be treated as such by the Commission, provided the cause for such treatment is shown. The Commission may also request a non-confidential summary of the confidential material it is given, or the reasons why a summary cannot be provided. You are encouraged to contact the Commission for further information and advice before submitting such material. Material supplied in confidence should be provided under separate cover and clearly marked 'IN CONFIDENCE'.

How to lodge a submission

Each submission should be accompanied by a submission cover sheet. The submission cover sheet is available on the inquiry web page. For submissions received from individuals, all **personal** details (for example, home and email address, signatures, phone, mobile and fax numbers) will be removed before they are published on the website for privacy reasons.

The Commission prefers to receive submissions as a Microsoft Word (.docx) files. PDF files are acceptable if produced from a Word document or similar text based software. You may wish to research the Internet on how to make your documents more accessible or for the more technical, follow advice from Web Content Accessibility Guidelines (WCAG) 2.0 <<http://www.w3.org/TR/WCAG20/>>.

Do not send password protected files. Do not send us material for which you are not the copyright owner — such as newspaper articles — you should just reference or link to this material in your submission.

Track changes, editing marks, hidden text and internal links should be removed from submissions before sending to the Commission. To ensure hyperlinks work in your submission, the Commission recommends that you type the full web address (eg <http://www.referred-website.com/folder/file-name.html>).

Submissions sent by email must not exceed 20 megabytes in size as our email system cannot accept anything larger. If your submission is greater than 20 mb in size, please contact the Administrative Officer for the relevant project to organise another method of sending your submission to the Commission.

Submissions can be accepted by email or post:

Email*	agriculture@pc.gov.au
Post	Regulation of Australian Agriculture Productivity Commission Locked Bag 2, Collins St East PO Melbourne VIC 8003

* If you do not receive notification of receipt of an email message you have sent to the Commission within two working days of sending, please contact the Administrative Officer.

Due date for submissions

Please send submissions to the Commission by Friday 12 February 2016.

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