# National Farmers' Federation

# Submission to the Productivity Commission inquiry into the regulatory burden on farm businesses

**February 2016**

**NFF Member Organisations**



























The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers, and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

Following a restructure of the organisation in 2009, a broader cross section of the agricultural sector has been enabled to become members of the NFF, including the breadth and the length of the supply chain.

While our members address state-based 'grass roots' or commodity specific issues, the NFF's focus is representing the interests of agriculture and progressing our national and international priorities.

The NFF has for 36 years consistently engaged in policy interaction with government regarding a range of issues of importance to the sector including trade, education, environment, innovation to name a few.

The NFF is committed to advancing Australian agriculture by developing and advocating for policies that support the profitability and productivity of Australian farmers.

# Statistics on Australian Agriculture

Australian agriculture makes an important contribution to Australia's social, economic and environmental sustainability.

## Social >

There are approximately 115,000 farm businesses in Australia, 99 percent of which are family owned and operated.

Each Australian farmer produces enough food each year to feed 600 people, 150 at home and 450 overseas. Australian farms produce around 93 percent of the total volume of food consumed in Australia.

## Economic >

The agricultural sector, at farm-gate, contributes 2.4 percent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production in 2013-14 was $56 billion – a 9 percent increase from the previous financial year.

Yet this is only part of the picture. When the vital value-adding processes that food and fibre go through once they leave the farm are added in, along with the value of all economic activities supporting farm production through farm inputs, agriculture's contribution to GDP averages out at around 12 percent (over $155 billion).

## Environmental >

Australian farmers are environmental stewards, owning, managing and caring for 52 percent of Australia's land mass.

Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 94 percent of Australian farmers actively undertaking natural resource management.

The NFF was a founding partner of the Landcare movement, which in 2014, celebrated its 25th anniversary.

# Contents

# 1. Introduction

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the Productivity Commission's (PC) inquiry into the regulatory burden faced by farm businesses. The NFF is dedicated to removing the unnecessary burden and costs of over-regulation on farmers. Government and industry must work in unison to eliminated duplicate and excessive bureaucratic red tape to maximise the efficiency of the Australian farm sector.

Every day Australian farm businesses work to deliver a reliable, consistent and sustainable supply of high-quality food and fibre products for millions of domestic and international customers. Agriculture is a highly productive, innovative and efficient sector of the economy, using modern technology and rigorous assurance processes to maintain food safety, product quality and environmental protection.

The opportunities for the agricultural sector in the coming years have been well documented through Government initiatives such as the *National Food Plan* and the recent *Agricultural Competitiveness White Paper,* along with industry reports such as the *Blueprint for Australian Agriculture*. Despite this, the sector is being limited in its efforts to seize these opportunities through a tangle of complex regulations which increase costs to industry and governments, and limit our competitiveness as individual businesses and a nation as a whole.

The NFF acknowledges the need for effective regulation. Often regulation provides important protections for the business owners, workers, and the community, and sets a minimum level of performance required to meet community standards and expectations. Additionally, regulation can also act to underpin high quality product status upon which farmers can attract price premiums. However, it is important that regulation is warranted, appropriately targeted, clearly communicated, and that restrictions are minimised as far as possible to avoid perverse outcomes. In short, the benefits of regulation must outweigh the costs of doing so.

There have been a number of inquiries undertaken by both Government and industry into the regulatory burden facing Australian farmers. In 2013, the NFF released its *Issues Paper – Red Tape in Australian Agriculture*. This report identified burdensome regulation currently hindering the sector, and identified a number of areas for reform. Supporting this paper was work commissioned by the NFF that quantified the overall cost of regulation for a farm business. This *Cost of Bureaucratic Red Tape in Agriculture* report identified that regulation costs the average farm $34,367 per annum. This report is discussed in more detail in section two of this submission.

Additionally, in 2013 the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) completed their *Review of Selected Regulatory Burdens on Agriculture and Forestry Businesses.* Similarly, in 2014 the Retailer and Supplier Roundtable Ltd released the *Paddock to Plate: Regulatory Hurdles* report, identifying regulatory impediments within food supply chains.

The NFF urges the PC to review these previous reports and their recommendations as part of this inquiry.

This submission has been prepared in alignment with the key areas of regulation identified in the inquiry's Issues Paper. Additionally, other areas of regulation that the NFF believe have a material impact on farm businesses have also been discussed.

## 2. Background

Each day farm businesses battle through a myriad of burdensome, complex and duplicative regulations which make it difficult for farmers to ensure Australia has an ongoing, reliable and sustainable source of domestically produced food and fibre.

The types of regulation impacting farm business are diverse and come from many sources. According to ABARES, at the federal level Australian farmers are governed by approximately 90 Acts administered by the Department of Agriculture and Water Resources[1]. This figure also does not include regulation that is common across all business types and industries.

Farm business are also impacted upon by regulation administered at a jurisdictional level. In 2012, NFF member AgForce Queensland conducted a desktop analysis[2] and found that at a state level, Queensland farm businesses are regulated through over 55 Acts and Regulations covering over 9,000 pages – this is in addition to local government by-laws, associated codes and Federal legislation.

The story is no better in other states, with the then Tasmanian Department of Economic Development, Tourism and the Arts releasing a report in January 2013[3] with some astounding figures. The gross value of production of agriculture, fishing and forestry in Tasmania was $1.982 billion. The total cost of red tape for those three sectors was $321.4 million a year. This figure represents 16.2 percent of the value of production. One dollar in every six at the farm/fishery/forest gate is lost on regulatory imposts and meeting the cost of compliance. NFF member, the Tasmanian Farmers and Graziers Association indicated that this study had a limited scope and that by taking into account the areas that were not measured as part of the report, the actual cost could be double the estimate[4].

Moreover, the NFF commissioned Holmes Sackett to quantify the average annual cost incurred by Australian farms as a result of bureaucratic red tape. Unsurprisingly the results highlighted the excessive cost regulation placed on the sector. For a mixed farming enterprise, one of the most common farm types in Australia, the average annual cost was $34,367.

More specifically:

- Of this total amount, $30,659 was for overhead expenses and $3,708 was for wage expenses associated with bureaucratic red tape.
- Farms had approximately 20 days taken up on tasks associated with bureaucratic red tape which equates to 4 full weeks (5 days) or 8.5% of the working year.
- The total expense of $34,367 per annum relating to bureaucratic red tape equates to 3% of income, 4% of total expenses and 15% of net farm profit of these farms.

This farm-level figure, coupled with industry and jurisdictional level assessments, clearly reveals the extent to which regulation impacts on Australian farm businesses. While reiterating the NFF's view that some regulation is warranted, and in some instances underpins our premium producer status, the current amount of regulation is overreaching and acts as a hindrance to productivity.

Compounding the impact of this excessive amount of regulation is the often limit resources for which farm businesses have to comply with this regulation. According to the Australian Bureau of Statistics (ABS), 94% of Australian farms have operations valued at less than $1 million[5]. These small, mostly family owned business, simply lack the resources to both understand and act on their regulatory responsibilities.

[1] ABARES (2013), Review of Selected Regulatory Burdens on Agriculture and Forestry Businesses.
[2] AgForce (2012), Submission to Queensland Competition Authority: Reducing the Burden of Regulation, http://www.qca.org.au/files/OBPR-AQ-sub-MeasuringReducingBurdenRegulation-0812.pdf
[3] Tasmanian Department of Economic Development, Tourism and the Arts (2013), Measuring Red Tape: Understanding compliance burden on Tasmanian businesses.
[4] Tasmanian Farmers and Graziers Association (2013), http://www.tfga.com.au/in-the-news
[5] Australian Bureau of Statistics (2013) www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features10Dec+2012

# 3. Land Tenure and Use

***Land use planning***

Land use planning regulation is largely a function of state, territory and local governments. The extent to which agricultural businesses are affected by planning legislation can vary considerably between local government areas and from state to state.

In an agricultural context, local planning zones often provide exemptions for a range of agricultural and structures. In many instances, development consent may be required – either under local planning laws or environmental laws – for activities such as the removal of native vegetation or for a new intensive animal husbandry use (e.g. piggery, broiler farm, feedlot). The planning application process can deter a farm from increasing their intensity or efficiency as a change in the operation of a business may trigger the need to obtain consent under land use planning regulations.

Farmers are concerned with the cost, complexity, delay and uncertainty associated with development consent. In most jurisdictions (state and local), third party notice and review rights can lead to contention and further cost for farming businesses in obtaining a permit.

In many states, changes to planning requirements can be introduced with little scrutiny of their effectiveness and cost impost on regulated entities. In NFF's view, there are opportunities to improve the competitiveness of businesses by reducing or streamlining planning permit requirements, and improving the scrutiny around how new planning requirements are introduced, through for example a regulatory impact statement.

***Recommendation:***

- streamline planning permit requirements and improve the scrutiny around how new planning requirements are introduced.

***Native Title***

While the *Native Title Act 1993* protects the position of pastoralists to the extent that they can continue to carry out pastoral activities, protracted native title processes have implications for the future upgrading of tenures and future changes of land use. The absence of cost and time effective Native Title resolution therefore locks pastoralists into their current position, and stifles change that may enhance their viability. In some instances, consideration of native title claims has taken decades, and remains unresolved. Of the claims that remain unresolved a substantial number involve disputes with overlapping claims or the composition of the claim group. This leaves pastoralists with lingering uncertainty.

***Recommendations*:**

There are opportunities for sensible and appropriate regulatory reform to Native Title, that can provide greater certainty for all parties and providing a sound legal footing to encourage consent determinations. Regulatory reforms supported by NFF include:

- Ensuring that respondents enter into negotiations with a single claimant;
- Adjusting the time at which pastoralists are joined as a party to the claim may remove the angst associated with the timeframe that is required to establish and clarify the applicants to the claim;
- Establishing a sunset clause. The absence of any deadline for lodging claims mean vast areas not yet subject to claim (and not previously subject to claim) will remain subject to the provisions of the future act regime of the Native Title Act 1993 indefinitely. This stifles tenure reform;

- Providing a structured and supported environment in which claimants and respondents can negotiate and reach agreement over access. Encouraging consent determinations should be a priority; and
- Providing clear timeframes for negotiations, resorting only to the courts to resolve those points of difference.

# 4. Environmental Protection

Australian farmers have frequently expressed concerns over the approval process involved when looking to change existing land use and function on-farm. In addition to the myriad of local and state government environmental regulations farmers have to comply with on a daily basis, farmers are also regulated by the 1,000-odd page *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). Changes in activity on farm may be exempt from requiring local or state government approval, but still trigger Commonwealth laws. Further, as the footprint of environmental laws is extended with new listings – an activity that does not require consent today may require approval if a new listing comes on line. This results in considerable confusion for farmers.

For farmers, awareness of their specific responsibilities under any environmental law is around 30 percent, with this awareness level focused on state-based regulation[6]. There is confusion that is generated by a lack of harmonisation between State and Commonwealth laws. Despite any good intentions farmers might have to comply with the regulation, awareness and confusion often results in inadvertent non-compliance with the law.

The EPBC Act requires farmers to gain Commonwealth approval where development will have a 'significant impact' on matters of national environmental significance, including operations on heritage listed sites, RAMSAR wetlands, nationally threatened animal and plant species and ecological communities.

Key to understanding whether an activity requires referral under EPBC is the test of "significant impact". In essence, the Act requires a farmer to self-assess whether the proposed activity will have a significant impact. For a farmer to have absolute confidence that they are acting legally under the EPBC Act, a detailed referral process must be completed to ascertain whether their actions will significantly impact a listed matter. This detailed referral process requires the provision of independent technical reports and a period of public comment on the proposed activity.

An example of this is of a landholder seeking to clear 1.2 hectares of land near Coffs Harbour NSW for a blueberry farm. The clearing was considered to be clearing of "regrowth" under State native vegetation laws, and as such no state approval required. However, the proposed clearing area included one EPBC listed threatened plant species and potential habitat for six EPBC threatened animals or birds. The proposed clearing action was going to remove 5 plants in the 1.2ha area, and it was estimated that there was 6270 plants on the total property.

The landholder did the "right thing" referring the development to Commonwealth to determine whether Federal Environmental approval was required. This referral required the following details:

- 19 pages application information
- An Independent expert report on proposed environmental impacts – which included 22 pages detailed text, 18 GIS maps, 19 pages of detailed list of potential species on sit and likelihood of occurrence site
- A period of public comment was required.

The outcome of the referral was that the action was "not controlled" and as such Commonwealth Approval was not required. A more streamlined process for seeking formal advice as to whether the proposed activity is significant and will actually trigger the EPBC is required.

[7] See Gibbs, C, Harris-Adams, K & Davidson, A 2013, Review of Selected Regulatory Burdens on Agriculture and Forestry Businesses, ABARES (Report to client prepared for the Department of Agriculture's Agricultural Productivity Division), Canberra, November. pg 58

NFF supports the recommendation of ABARES (2013) to provide a quick, low cost appraisal of proposals to indicate whether a proposed activity is likely to require referral[7]. This is likely to also reduce the costs of administering the Act for Government, in that more detailed application and assessment processes will not be triggered unnecessarily.

In addition to the Commonwealth approval process, Australian farmers may also require environmental approval through their State accreditation processes for the same on-farm actions. Each State has a separate (and often overlapping) set of protected matters, guidelines, rules and requirements which just add complexity. In many instances, the State approval processes have no set timeframe for a decision and response back to the farmer on whether they can proceed, and this increases uncertainty. The Australian Government has embarked on the establishment of "one-stop shops" with the states and territories to streamline environmental approvals. In most jurisdictions however, these agreements are focused on large state significant developments, and do not yet cover the most likely activities in the agriculture sector.

As a result of this complex and duplicative system, many farmers are reluctant to go through the process of changing their existing land practices as the regulatory steps that they must undertake are deemed to be too onerous and time consuming. Often, the opportunity for farmers to improve their profitability is forgone, due to the regulatory barriers. However, in some circumstances, this has regrettably placed pressure on farmers to take land use decisions into their own hands, with instances of poor judgement leading to convictions or poor environmental outcomes.

The process of listing matters of significance continues to increase regulatory reach of this Act on the agriculture sector. Each new listing expands the regulatory reach of the EPBC Act. This extending reach of the EPBC Act directly impedes landholders' ability to understand the extent of the Act. This growing reach, coupled with a considerable decline in the level of resourcing of communication and information activities severely limits the ability of regulators and service providers to improve communication about the Act.

Revisions of the lists are only possible through a cumbersome process of application to the Scientific Committee. Unlike many other regulations, there is no requirement for a periodic comprehensive review to ensure that the list reflects contemporary scientific understanding and information.

There have been a number of inquiries into environmental regulatory burden. For the 2004 Productivity Commission Inquiry, the NFF submitted[8] a number of case studies on regulatory burden that were collected for a 1998 Senate Inquiry into the EPBC Bill[9]. In summary, key concerns included time delays, confusion, opportunity costs for the farm business, and negative outcomes for the environment

Finally, there are parts of the EPBC Act that directly duplicate other Commonwealth Acts, despite a number of independent reports highlighting the issue and recommending change and redrafting processes occurring for each of the Acts shortly after. The risk assessments undertaken in order to import live animals is governed by both the EPBC Act and the *Quarantine Act 1908*. This is just one example of two very complex pieces of Commonwealth legislation that perform a duplicated function.

[7] See Gibbs, C, Harris-Adams, K & Davidson, A 2013, Review of Selected Regulatory Burdens on Agriculture and Forestry Businesses, ABARES (Report to client prepared for the Department of Agriculture's Agricultural Productivity Division), Canberra, November. pg 58

[8] NFF Submission to the Productivity Commission Inquiry into the Impacts of Native Vegetation and Biodiversity Regulations http://www.pc.gov.au/__data/assets/pdf_file/0014/52205/sub128.pdf

[9] http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=ecita_ctte/completed_inquiries/1999-02/bio/report/contents.htm

***Recommendations:***

- Streamline the implementation of Commonwealth and State environmental legislation by ensuring that "one-stop-shops" for environmental approvals encompass on-farm activities;
- Continued harmonisation of the list of protected matters to reduce confusion over state/territory and Federal Government legislation and overcome the confusion around geographic coverage, scientific definitions and thresholds for significant impact;
- Develop a quick, low cost method to appraise proposals to indicate whether a proposed activity is likely to require referral to support regulatory compliance and reduce costs for applicants and government;
- Ensure that environmental regulations (including lists of significant matters) are subject to periodic comprehensive review to ensure that the list reflects contemporary scientific understanding and information and that new listings are subject to appropriate analysis of regulatory impact; and
- Take steps to remove duplication between separate pieces of legislation, such as the duplicative process for import of live animals.

# 5. Access to Technologies and Chemicals

***Agricultural and Veterinary Chemicals***

Recent years have seen a number of reforms in the laws governing the registration and control-of-use of agricultural and veterinary chemicals. Poorly managed processes and a lack of strategic vision has led to confusion and additional burden on the agricultural sector, without improved outcomes for human safety, the environment or farm input costs.

The Australian Pesticides and Veterinary Medicines Authority (APVMA) has a consistent track record of failing to meet set approval timeframes, and the uncertainty and expense of the approvals process acts as a deterrent to global chemical companies when assessing markets for new products.

The Federal Government has recently convened a process aimed at reducing the compliance burden of agricultural and veterinary chemicals. The agricultural sector supports a framework which ensures chemicals are safe and effective, while ensuring the compliance burden is proportional to the potential risk posed by a product

A number of opportunities exist to reduce the red tape burden on industry without sacrificing the integrity of the regulatory framework. These include making greater use of data and assessments accepted by well-regarded overseas regulators, and more effectively tailoring the assessment pathway to the risk profile of an application.

Policy reforms should also be underpinned with sufficient incentives to bring newer and safer chemicals to market, particularly in cases where there may not be a commercial incentive for manufacturers due to the small Australian market. The Government has recently funded small grants which are accessible to industries to generate registration data, however this program needs to be funded on an ongoing basis and underpinned by a structured and funded engagement programme between industry and registrants.

Inefficiencies within the regulatory system have continually been highlighted to the NFF. For example, an animal health company recently explained that for simple changes the APVMA may take up to double the legislated timeframe - 6 months for the APVMA to approve an additional pack size (legislated timeframe is 3 months). Such matters are compounded by additional processes added to the functions of the regulator by the Government, without sufficient funding also attached.

**Recommendations:**

- Adequately fund the APVMA and an ongoing minor use program, recognising the public good from these actions and the subsequent improvements to regulatory burden facing the agricultural sector; and
- That the Government proceed with efforts to streamline the regulatory framework surrounding registration and use of agricultural and veterinary chemicals.

***Data collection***

A common complaint for farmers is the inability of governments to share information internally, and across jurisdictional boundaries. Even within agencies, farmers and industry representative bodies have to provide the same data numerous times. Farmers are always looking to ensure the data they collect in their business is done in an efficient manner and only collected when it serves a valuable purpose, and they expect Government to do the same.

In 2007, the PC recommended[10] that improved coordination between ABARES and other Government agencies in collecting farm data could reduce the time spent by farmers in completing surveys. Five years down the track, there is little evidence that any steps have been taken to improve the situation.

One example that was brought to the attention of the NFF recently was a farm business that had received a number of onerous and excessive requests for information from the ABS. In this particular case, four requests for information had been received over the last three years, covering specific details of operations including off-farm financial information. The farmer estimated that proper completion of the surveys would take at least a full day each time. The farmer was also concerned that information requests may have been on a non-random basis, due to a survey officer indicating that the surveys were particularly focused on larger farm businesses. On top of these issues, there was often a lack of time to provide the information, with the ABS providing only fourteen days from the date of the covering letter, which is unrealistic in rural areas where mail is not delivered daily and other farm tasks may be a priority during that period of time. This one example highlights the large amount of work required for just one agency and becomes more frustrating for farmers when multiple requests come from a variety of sources.

With the Australian Government's implementation of the *Water Act 2007*, there are now several Australian government agencies and authorities collecting water data. These include the National Water Commission, the Murray-Darling Basin Authority, the Bureau of Meteorology, the Australian Competition and Consumer Commission, the ABS, and the Department of Agriculture and Water Resources. In many cases, the different entities require slightly different water data, or in different formats. State agencies also collect water data. All these different data requirements increase the cost of doing business for the irrigation organisations and farmers who are required to provide the information – or they pay the costs of doing so through water charges.

The NFF strongly urges the Australian Government to agree on what information is to be collected and who will collect and distribute this to other entities.

***Recommendations:***

- Data collection agencies should improve consultation with industry to explain the information they are seeking and take advice on the best approach on how to obtain it. Agencies should then consult with industry to ground-truth the data they have collected, as there are many occasions when it is clearly not a true representation of reality;
- The Australian Government should consider ways to streamline data collection from farm businesses, to minimise time taken, while ensuring important information is still collected and made available for policy and on-farm decision making; and
- The Australian Government implements a one stop shop for water data collection, and that this be progressively expanded to include the provision of water data to state agencies.

**Biotechnology and Genetic Modification**

New technologies and the improved use of available technologies such a biotechnology and genetically modified (GM) crops have assisted Australian farmers achieve efficiency and productivity gains, and have helped ensure Australian agriculture can remain competitive in international markets.

The NFF recognises the potential of biotechnology (including gene technology) as a valuable tool within agricultural production systems. The responsible and strategic application of biotechnology within Australian agriculture can result in significant benefits for Australian farmers, the environment, consumers and the Australian economy as a whole. Australian cotton growers, for example, have

[10] Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, 2007 http://www.pc.gov.au/__data/assets/pdf_file/0018/74115/primarysector.pdf

reduced their use of pesticides by over 90 percent over the last 10 years due to biotechnology and best management pest practices.

The NFF supports the removal of unnecessary restrictions on the use of biotechnology by Australian farmers where the technology poses no health or environmental risk. The current moratorium on the use of GM crops in South Australia is an example of such unwarranted regulation in this regard. With much of the science community expelling the fears surrounding GM crops, this moratorium acts solely to restrict the ability of farmers to choose their production means and methods, and in doing so limits innovation and growth in the sector.

***Recommendations:***

- The NFF supports the removal of unnecessary restrictions on the use of biotechnology by Australian farmers, where these technologies pose no health or environmental risks.

# 6. Water

In the Australian Water Markets report 2012-13[11] , the National Water Commission reported that delays in processing water trade applications can impose significant costs on water users. Although a number of commercial service providers electronic trading platforms, these platforms rely on state governments to approve the trades. Improving state- based regulation to facilitate faster trading will decrease the transaction costs associated with delays in trade.

The absence of a consolidated source of market information results in considerable inefficiency in the water market. Ultimately, most irrigation farmers largely rely on the advice of their water brokers rather than conduct their own analysis of the many different trading platforms operated by private companies, irrigation organisations or the often dated market information available on government websites. Regulatory reform to improve the transparency and availability of water market information would go some way to redress the information imbalance between water market participants.

In the southern Murray Darling Basin, the water market will continue to deepen. More and more irrigation farmers will hold a "portfolio of water entitlements" and need to interact with more regulatory authorities. A rice grower in Southern NSW for example, may hold water entitlements with the NSW, Victorian and South Australian Governments, and shares in private irrigation companies such as Murray Irrigation. Each jurisdiction has their own regulatory arrangements, including those around water use, and trade.

With the Australian Government's implementation of the *Water Act 2007*, there are now several Australian government agencies and authorities collecting water data. These include the Murray-Darling Basin Authority, the Bureau of Meteorology, the Australian Competition and Consumer Commission, the ABS, and the Department of the Environment and the Department of Agriculture and Water. In many cases, the different entities require slightly different water information, or the information in different formats. State agencies also collect water data. All these different data requirements increase the cost of doing business for the irrigation companies, costs which are then passed on to farmers through water charges.

The NFF strongly urges the Australian Government to agree on what information is to be collected and who will collect and distribute this to other entities.

It is important to recognise that water recovery targets established under the Murray-Darling Basin Plan do not erode the water property rights of individual water users. Unlike past water reforms, participation in water recovery programs to "bridge the gap" - water buybacks and investment in water infrastructure both on and off farm - have been voluntary in nature. Water recovery targets do not add a regulatory burden to farm businesses.

The "red tape" burden of the Murray Darling Basin Plan on farmers materialises where the regulatory environment imposes costs that are ultimately passed down to individual entitlement holders through water charge rules. These include the additional costs associated with the requirements of the plan for water planning and management activities by both the MDBA and state agencies. Unlike state agencies and private water infrastructure operators, there is still little transparency or independent review of the MDBA's cost structure in this regard.

***Recommendations:***

- State governments to coordinate efforts and resources to reduce transaction times for water trades to be approved;

[11] Water Markets Report 2012-13 (2013), pg. 41

- A commitment to harmonising water regulation between jurisdictions, particularly where there is a common water market; and
- A single portal for water data collection for all levels of government.

# 7. Transport

The extensive rural location of agricultural production across Australia means that freight and transportation are important and integral components of ongoing production and any future development.

The principle constraints[12] on driving productivity through a more efficient freight sector include:

- Encroachment of freight activities.
- Restricted use of infrastructure.
- Uncertainty about the capacity for growth.
- Lack of responsiveness of infrastructure to economic demand.

Urban encroachment on many freight corridors is causing opportunities to improve freight efficiency to be lost, highlighting the ongoing importance of well-considered land use planning. Infrastructure restrictions (whether physical or regulatory) limit vehicle sizes, configurations and operating hours, as does the application of different regulations in different jurisdictions. Inefficiencies abound when a truck or truck configuration cannot drive the full distance of a freight journey; this is the 'first and last mile' issue'. The next generation of freight vehicles or 'interoperable high productivity vehicles' (long, double stacked trains and B triple or super B double trucks at higher mass limits) offer improvements in freight efficiency but their use is currently restricted. Choice of technology may also act to increase the long term cost and 'lock out' or reduce interoperability, even though local cost benefit may result[13].

This year has seen the move towards a single National Heavy Vehicle Regulator (NHVR). This is a step in the right direction and will lead to productivity improvements across the nation, but there is still a lot of work required to implement consistent requirements across states. Processes aiming to harmonise regulations nationally need to engage closely with industry bodies in relevant jurisdictions, to ensure individual businesses are not unduly impacted in the quest for overall improvements for the economy.

An example where there has been concern is with driver fatigue arrangements under National Heavy Vehicle Law (NHVL). Through the process of harmonisation, the NHVL requires drivers engaged in work that takes them more than 100km from their base to complete a work diary. This presents a change for some Queensland operators from the 200km radius limit that has previously applied in Queensland. NFF member organisation, AgForce objected[14] to this clause as the Queensland legislation allowed 200km, in recognition that it is a large state and in some cases for farmers, 100km does not even allow them to get to their nearest town, and in some farm businesses, to their nearest depot. While it is recognised that the NHVR will have an exemption category, this will ultimately depend on how the regulator enacts the legislation and if flexibility and common sense is not provided there may be an inappropriate level of regulatory burden imposed on those operators in remote regions.

Another area for concern is the inconsistency in fatigue management laws and the animal welfare requirements for transport of livestock. The greatest impact of these is in remote areas where drivers work / sleep / live in their trucks and are required to comply with both fatigue management laws and also standards for transport of livestock, in regions often without facilities to rest livestock within the specified period. Again, it is in these situations where rigid rules can have perverse outcomes and a certain level of flexibility and common sense is required to ensure positive outcomes for both the welfare of the driver and the livestock.

[12] AgForce Submission: Queensland Competition Authority , Reducing the Burden of Regulation, August 2012
[13] AgForce Submission: Queensland Competition Authority , Reducing the Burden of Regulation, August 2012
[14] http://www.parliament.qld.gov.au/documents/committees/THLGC/2012/INQHVNLA/submissions/HVNLA_121207_Submission%2012.pdf

The costs (and continuing regulatory creep) imposed on businesses by the chain of responsibility and fatigue management rules in relation to heavy vehicles is an ongoing concern. In 2007, the Productivity Commission[15] indicated that these appear to be unavoidable if health and safety objectives are to be served. However, there may be an opportunity to revisit these obligations and consider whether health and safety policy objectives could still be achieved with a lower cost burden on business. Ultimately, the chain of responsibility requirements have shifted some of the burden of compliance to farmers. This effectively makes one business partly responsible for the performance and compliance of a separate business entity. It is unreasonable to expect a farm business to police the actions of a separate business[16].

***Road Safety Remuneration regulation***

The *Road Safety Remuneration Act 2012* increases rates of pay for transport workers (employees and contractors), makes end users (often small businesses) responsible for conduct of others in the supply chain, whether or not they have any capacity to control outcomes, significantly increases the paperwork burden on small business and broadens the scope of the general protections in the FW Act so that it covers contractors as well as employees.

The Act is fundamentally flawed. It protects major transport and logistic providers against commercial risk by transferring that risk along the supply chain. In this respect, it does not do what it seeks to do; that is, to safeguard small contractors at risk of exploitation or unfair treatment. In our view, the regulatory framework is anti-competitive, inefficient and expensive. It does not meet the test of 'good regulation' because the costs of compliance far outweigh the benefits of sector-specific rules of this kind, and there is no evidence to justify the continued operation of the laws. The Act should be repealed.

In addition, the Road Safety Remuneration Tribunal (the Tribunal) has made two Orders that increase cost and regulatory burden for small businesses significantly. In particular, these orders increase the paperwork burden for businesses. Small businesses in this industry are unable to cope with that burden, or the magnitude of unnecessarily strict regulatory requirements. Flexibility is important for these businesses to work in an efficient manner. The cost of compliance with the Tribunal's Orders far exceeds the benefits.

***Recommendations****:*

- Decision making on access to infrastructure, particularly the road and rail network, may be improved with greater information (noting importance of collecting data in a manner that minimises cost and impacts on business), including on overall implications for road safety. An independent review and public report on impediments to access, followed by an economic assessment would be a positive first step;
- Flexibility and common sense needs to be applied in the enactment of National Heavy Vehicle Laws and guidelines governing the transport of livestock, this includes chain of responsibility and fatigue management rules. Compliance and enforcement functions will need to be carefully monitored as new regulatory regimes are rolled-out; and
- The Road Safety Remuneration Act 2012 and any Orders made under it should be repealed.

[15] Productivity Commission (2007), Annual Review of Regulatory Burdens on Business: Primary Sector, http://www.pc.gov.au/__data/assets/pdf_file/0018/74115/primarysector.pdf

[16] Victorian Farmers Federation submission to Annual Review of Regulatory Burdens on Business: Primary Sector, Productivity Commission, (2007) http://www.pc.gov.au/__data/assets/pdf_file/0003/64119/sub013.pdf

**Coastal Shipping Regulation**

Affordable shipping is an important issue for Australian farmers. All commercial produce is transported from the farm gate to market and approximately two-thirds of all Australian produce is exported. For many farmers, shipping is an essential link in the supply chain. Australian products must be able to move quickly from the farm gate into domestic and overseas markets at a price that delivers a return to the farmer.

The key policy objective of any coastal trading regulation should be to promote Australia's economic growth and productivity through competitive, efficient and effective maritime transport services. Current coastal shipping regulations have resulted in a less competitive shipping sector in Australia and higher costs and more red tape for Australian farmers, many of whom rely on maritime transport services to get their goods to market. The impact is felt more severely in Tasmania because of its heavy reliance on sea freight.

*The Coastal Trading (Revitalising Australian Shipping) Act 2012 (Coastal Trading Act)*

The *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Coastal Trading Act) and related legislation was introduced in 2012 with the object of providing 'a regulatory framework for coastal trading in Australia that promotes a viable shipping industry which contributes to the broader Australian economy; facilitates long-term growth of the Australian shipping industry; enhances the efficiency and reliability of Australian shipping; and maximises the use of Australian vessels registered under the Australian General Shipping Register.'

Despite these goals, there is no evidence that the legislation has had any 'revitalising' effect on either Australian shipping or the broader economy. If anything, the anecdotal evidence suggests that the reforms have had the opposite effect.[17] The cost of shipping goods by sea has increased and there is a perception that the Australian coastal trade is all but closed to foreign ships, with a resulting reduction in access to freight services. There has been no take up of the international shipping register and no obvious signs of significant investment in the Australian fleet.

Under the current regime, a person can contract with a shipping company to ship their goods at an agreed price. Assuming the ship that will carry the goods is not registered in Australia, a temporary licence must be obtained. Before granting a temporary licence, the Department of Infrastructure is required to notify operators of Australian registered ships of the proposed voyage. Those operators can nominate for the voyage themselves and take over the contract with the approval of the Department. There is no requirement to take over the contract on the terms agreed. This means that the new operator is in a position to renegotiate contracts at will and the original contracting parties remain bound by their contracts, with no right of refusal.

The *Coastal Trading Act 2012* seeks to encourage ships to register on the Australian General Register by restricting access to temporary and emergency licenses. Ships seeking to undertake less than five coastal trading voyages have no other option. Temporary license applications must specify at least five voyages that will be undertaken in a 12 month period and emergency licenses are only available in a limited number of 'emergency' circumstances such as flood, bushfire and other natural disasters.

Applicants for a temporary licence must specify in detail at least five future voyages to be undertaken. The details of these voyages set the parameters of the licence to engage in coastal trade and cannot change unless formally varied. The voyage information is made publically available and provided to holders of general licences, who then have an opportunity to nominate for the voyages that are the subject of the license.

[17] http://globial.com/globialtalksbusiness/australias-coastal-shipping-reforms-face-criticisms, 20 October 2013

This process gives Australian registered ships every opportunity to exclude foreign-registered ships from accessing the Australian coastal trade. While this has not always been the result, it is likely to have acted as a deterrent to foreign ships seeking to service the Australian market. It is also a clear attempt to restrict the capacity of foreign workers to work in Australia. There is no direct policy statement on how a minimum five voyage requirement will assist in revitalising the Australian shipping industry and there is similarly no evidence that it has resulted in an expansion of the Australian coastal trading fleet. The requirement is in the nature of 'red tape' and should be repealed.

*The Australian International Shipping Register (AISR)*

The *Shipping Registration Amendment (Australian International Shipping Register) Act 2012* (the AISR Act) established the Australian International Shipping Register (AISR) 'to provide a competitive registration alternative for Australian shipowners and operators who predominantly engage in the international trades.'[18] Ships registered on AISR are eligible for income tax exemption and other tax incentives. Despite what appear to be generous tax incentives, there are currently no ships registered on the AISR.[19]The NFF understands that this is due both to high government registration fees and the requirement that before registering, a (non-Fair Work Act) collective agreement must be reached with all relevant maritime unions, effectively on a 'take it or leave it' basis.

*Fair Work Act coverage*

The *Fair Work Act 2009* covers foreign workers while on temporary licensed voyages in Australia's coastal trade. Before the 1st of January 2010, these workers were not covered by the *Fair Work Act* but were covered by the laws of their home country and /or the laws of the ship on which they were engaged. A significant increase in shipping costs resulting from the *Fair Work Act* coverage of foreign workers in the coasting trade has seen a sharp drop in the number of ships trading around the Australian coast.

There are also technical issues relating to when ships are covered by the *Fair Work Act*. Majority-crewed ships might be covered in the morning, but excluded from coverage in the afternoon when a foreign maintenance crew joins the ship; workers are covered during a temporary licensed voyage, but not covered once the voyage comes to an end, though in each case they are on the same ship sailing between the same ports.

*In summary*

The NFF supports an immediate repeal of the *Coastal Trading Act* to reduce the red tape and compliance burden on the agriculture industry and encourage greater competition in the Australian coastal trade. A repeal of this nature would be unlikely to require complex transitional arrangements as the current licencing regime would no longer apply and access to the coastal trade would be readily available for ship owners or operators seeking to engage in coastal shipping. No transitional arrangements would be required in relation to the suggested repeal of collective bargaining measures in the *AISR Act* as the AISR has never been used. Ceasing coverage of the coastal trade through regulations to narrow coverage of the *Fair Work Act* may require interim transitional arrangements relating to voyages underway at the time of the commencement of any reform, but should not extend to cover voyages authorised by a temporary license but not yet undertaken. New regulations would be required to make it clear that the position on coverage of ships in the coastal trade has been reversed by expressly excluding such ships from coverage.

**[18]** Department of Infrastructure and Regional Development, *Australian International Shipping Register*, http://www.infrastructure.gov.au/maritime/business/coastal_trading/aisr.aspx
[19] Australian Maritime Safety Authority, *List of Registered Ships*, 26 May 2014, http://amsa.gov.au/vessels/shipping-registration/list-of-registered-ships/

***Recommendations:***

- Repeal the Coastal Trading Act and legislate to preserve importation rules as necessary to avoid unintended harsh outcomes or further restricted access to the coastal trade;
- Repeal collective bargaining provisions in the *AISR Act*;
- Repeal regulations in the Fair Work Regulations that extend the *Fair Work Act* to ships engaged in the Australian coastal trade and to majority Australian-crewed ships; and
- Make new regulations to expressly exclude ships engaged in the coastal trade from coverage of the *Fair Work Act*.

# 8. Animal Welfare

Animal welfare is regulated at a state and territory level through jurisdictional animal welfare legislation. Each state and territory has a prevention of cruelty to animals act, or a state animal welfare act, and these are enforced by the RSPCA or the state or territory Department of Primary Industries (or equivalent).

In addition to the legislated requirements, there are many examples of how farmers and the agricultural industry have improved how animals are treated as part of their day to day farming practices. Industry has adopted a number of heightened animal welfare practices ranging from low stress stock handling in the sheep, cattle and goat industries to the voluntary phasing out of sow stalls by the pork industry, which will occur at a cost of $50 million.

Is critical that industry is involved throughout the design, implementation and review of animal welfare regulation. The current debate surrounding the definition of free-range eggs is an example of where industry has been excluded from much of the discussion. While to an extent a consumer information issue, the establishment of a minimum standard for free-range eggs also presents itself as an animal welfare issue. From the outset, industry views appeared to have been overlooked in developing the standards. In doing so risks implementing standards that are unrealistic, unsupported by industry and will drive down sector productivity.

The NFF supports nationally harmonised legislation between states and territories in respect to animal welfare. Jurisdictional inconsistencies increase compliance uncertainly and associated costs.

Industry and Government have worked together to develop animal welfare standards for specific sectors of the livestock industry including land transport, sheep, cattle, pigs, saleyards and depots. These standards seek to:

- minimise the risk to animal welfare;
- meet community expectations for improved welfare outcomes;
- improve consistency of regulatory outcomes; and
- improve Australia's international animal welfare reputation.

The NFF was clear that the adoption of these principles must be done in a nationally consistent manner.

**Livestock exports**

Industry has worked closely with governments and key stakeholders to develop a system that protects the welfare of exported livestock. This system, the Exporter Supply Chain Assurance System (ESCAS), is an approved and independently audited system that meets international animal welfare standards, safeguarding the welfare of exported Australian animals.

The industry strongly supports ESCAS through the development and extension of Standard Operating Procedures that align with the World Organisation for Animal Health (OIE) animal welfare requirements. This support includes training, education and technical advice developed by industry and delivered by locally based animal welfare officers. Establishing this new system has required significant investment by both Australian and Indonesian industries and demonstrates the serious commitment of exporters and importers to getting the system right and ensuring the right welfare outcomes for Australian livestock.

***Recommendations:***

- The NFF supports national harmonisation of animal welfare legislation between states and territories in respect to animal welfare, to reduce compliance uncertainly and associated costs; and
- When developing animal welfare standards, or any other areas of regulation where there is potential for it to manifest itself as an animal welfare issue, industry views must be considered.

# 9. Biosecurity

A robust, efficient and science-based quarantine and biosecurity system is fundamental to maintaining Australia's enviable pest and disease-free status. The competitive advantage of Australian agriculture is our ability to produce and supply high-quality, safe, trusted products, which are traceable from farm to consumer and driven by a well-structured and thorough biosecurity system. In an environment of relatively low public funding support, effective biosecurity is a key Government contribution to the competitiveness of Australian agriculture. Hence, it should be understood that the NFF recognises the important role regulation in this regard plays.

The NFF has welcomed the impending replacement of the *Quarantine Act 1908*, with the *Biosecurity Act 2015*. The NFF continues to work through the details of the new legislation with Government to ensure the regulations provide for a biosecurity framework that is fit for the 21st century.

However, NFF members have expressed concerns that the impact of biosecurity regulations on the ability of Australian produce to access international markets. For example, it has been argued that some of the approaches used to mitigate the impact of Australian fruit flies when exporting products are overly burdensome and reduce the competitiveness of Australian exports by extending them time they must undergo quarantine practices. According to horticultural group Voice of Horticulture, treatments such as cold disinfestation for 18 to 21 days are unsuitable for highly perishable products like cherries. NFF horticulture members state that there are more efficient methods that are accepted by the incoming markets and which could be adopted. To this end, the NFF recommends the PC assess the extent to which closer collaboration between industry and Government with regards to biosecurity regulations could facilitate productivity increases.

Further, many Australian commodities face challenges accessing international markets due to non-tariff barriers put forward by oversees governments masqueraded as biosecurity regulations. While recognising the fact that these non-tariff barriers lie outsides the control of the Government, NFF members have stated that more resources need to be allocated to work with our trading partners to reduce them where possible.

Inconsistent jurisdictional biosecurity regulations also create unnecessary barriers to inter-state business within Australia. According to Voice of Horticulture, there are a number of impediments to inter jurisdictional trade including:

- The lack of recognition for industry accreditation of phytosanitary or biosecurity risk management practices and verification certificates.
- The lack of country-wide harmonisation in state trade codes adds red-tape to businesses that wish to trade.

Further, while reiterating the importance the NFF places on maintaining a stringent biosecurity regime, consideration must also be given to the impact biosecurity regulations have on the importation of animals and animal genetics. The NFF urges the PC to consult with NFF commodity members on instances where biosecurity regulations may act as an imposition to their industry to importing animals, plants or associated material that may be used to increase productivity in farming systems.

***Recommendations:***

- Australia's robust, efficient and science-based quarantine and biosecurity system must be maintained;
- Government dedicates more resources to addressing biosecurity related non-tariff barriers which are hampering the sectors ability to access markets;
- Government must work closely with industry to ensure biosecurity protocols and regulations are best suited to accepted industry practice;

- Biosecurity regimes are harmonised domestically, where it is appropriate to do so; and
- Consideration is given to where sensible reform can be made to facilitate the import of animals, plants or associated materials that will be used to increase agricultural productivity.

# 10. Consumer-related Regulation

***Food labelling***

The NFF is of the view that Australian farmers should have the opportunity to capitalise on their reputation for producing safe and high quality food, and generate premiums for this reputation wherever possible. Likewise, Australian consumers should be able to easily identify where their food comes from.

The NFF believes the current Country of Origin Labelling (CoOL) rules allow imports to masquerade as local produce, through the "Made in Australia" claim, while making it difficult for locally grown products to achieve the perceived premium claim of "Product of Australia". The view is that this undermines Australian farmers, who are seeking to capitalise on their good reputation for animal welfare, quality and above all food safety.

The NFF worked closely with the Government during 2015 to develop the new proposed CoOL framework. During this consultation period, the NFF was clear in its desire to see labelling that provided consumers with information that clearly articulated the country of origin for the food they consume. The NFF welcomed the proposed framework, including the mandatory labelling, as it will provide consumers with this understanding of where their food comes from.

The NFF provided a detailed submission to the proposed reform's Regulation Impact Statement. The NFF stated that it recognised that the prosed changes to CoOL regulation will have an impact on food manufacturers who must now comply with the new requirements. Whilst maintaining the integrity of the proposed changes, it is important that in seeking to provide greater clarity of a products origin, the cost and administrative burden placed on manufacturers is as minimal as possible. Minimising this burden will help to ensure the cost of operationalising the new framework isn't passed back on to farmers in the form of lower prices.

***Recommendations:***

- The PC should recognise the important role that the proposed mandatory country of origin labelling will play in providing consumers with this understanding of where their food comes from; and
- Whilst maintaining the integrity of the proposed country of origin labelling changes, it is important that in seeking to provide greater clarity of a products origin, the cost and administrative burden placed on manufacturers is as minimal as possible.

# 11. Competition Regulation

***Collective bargaining***

The farm sector has specific and unique characteristics that mean the impacts of ineffective competition legislation can have a more detrimental bearing than other businesses in the economy. The farming sector is fragmented, made up largely of small to medium sized businesses in remote areas with limited access to market information and opportunities for collective organisation. Fluctuations in input costs, the impact of climatic variations, limitations in infrastructure and the perishable nature of produce leave some farmers in an economically vulnerable position operating under extremely tight margins. These market factors result in imbalances between participants in the supply chain.

This inequality of market and or bargaining power means that farmers are largely price-takers in the market and susceptible at times to questionable business practices. Farmers may be forced to accept standard form contracts on a "take it or leave it" basis or to operate under arrangements without the benefit of contractual security. As a consequences, collective bargaining is an important tool to help address these issues, and restore in some part a balance in the power of market participants.

The *Competition and Consumer Act 2010* (CCA) restricts the use of either collective bargaining or boycotting, though there are exceptions. The restrictions aim to prevent lessening of competition. The NFF recognises the necessity of protecting the competitive process. Nonetheless, in the NFF's view there are opportunities to amend certain regulations placed on collective bargaining, which in doing so will enhance competition within the market place.

*Public detriment test*
Instead of relaxing the current test for collective boycotts (that is, the public benefit test) an available reform is to seek a reversal of the onus. That is, in considering whether a collective boycott application should be approved, the PC should recommend that the focus be altered to whether that boycott could cause any 'public detriment'. This would be a less onerous test while still complying with the overarching purposes of the CCA.

A public detriment test does not specifically seek to advance consumer interests (unlike a public benefit test), rather it is aimed at maintaining them. In favour of this proposal is the argument that the current collective boycott regime is inaccessible and largely discounted in the marketplace. Because of this, processors are able to arrange their affairs in the knowledge that producers will always be at a competitive disadvantage and permanently hamstrung in their negotiation position.

*Interim boycott approval*
Reforms allowing interim boycotts in certain/limited circumstances may assist producers' ability to progress negotiations. That said, a fundamental change to the 'public benefit' test is first necessary for this proposal to have any impact.

*Threshold increase*
The current threshold for primary products is $5 million. An increase in this amount would expand its accessibility to a wider range of businesses within the agricultural market.

*Role of Peak Bodies*
The PC should recommend changes that increases the ability for peak bodies to commence and progress collective bargaining and boycott applications, on behalf of their members. However, in providing for this it is important that there are appropriate measures in place to ensure that peak bodies are truly representative of farmers in their respective agricultural sector.

***Misuse of Market Powers Provisions***

Reforming misuse of market power provisions should be about protecting the competitive process, rather than protecting individual competitors. A truly competitive market, where companies succeed and fail as a result of merit, not as a consequence of dominant companies misusing market power, will best foster innovation and growth. Such innovation and growth will ultimately best serve the interests of the community.

In order to best protect the competitive process, the NFF retains support for amending the Australian Competition Law. Specifically, the NFF recommends amending section 46 of the *Competition and Consumer Act 2010*. The NFF supports replacing the existing purpose test with an 'effects test'. This would shift the onus of consideration from what a company's purpose of conduct was, to what effect that conduct had on any given marketplace.

***Industry codes***

The NFF supports the authorisation of enforceable industry codes of conduct where these codes maintain and foster competitive marketplaces. When designed and implemented properly, the regulation of the market in this regard can be a valuable tool to influence or control uncompetitive commercial behaviour within a particular industry and can assist in providing a dispute resolution framework for those covered by the code. Providing this framework for improved competition untimely serves the community wellbeing by fostering greater consumer choice.

The NFF welcomed the Supermarket Code of Conduct Code, which seeks to provide a more formal, open and transparent process through which the major retailers will negotiate supplier trading terms and enable them to work together to draft Supply Agreements. Notwithstanding this, in its submission to the Harper Review of Competition Policy[20], the NFF highlighted a number of shortcomings in the code's current structure that should be rectified. Such shortcomings included the Code being non-mandatory, the types of supply chain relationships covered and the perceived lack of independence of the dispute resolution process.

Regarding the Horticulture Code of Conduct, while the NFF supports the intent of the code and believes that a robust code is critical for long term future success of the horticulture industry, the Code in its current form has failed to adequately address the key issue of transparency across the supply chain. In its submission the Horticulture Code of Conduct Review, the NFF's stated that the code can be strengthened through its enforcement and dispute resolution provisions, ensuring all contracts are covered by the code, and harmonising provisions with the Food and Grocery Code of Conduct.

From a regulatory burden perspective, the NFF's view is that strengthening the current codes through such means as stipulated above will ensure that where the market place is regulated, it is done so in a way that delivers the greatest benefits to the competitive process, and in turn the public.

***Recommendations:***

- Relax the 'public interest' test for boycott approvals, to consider the unique nature of agricultural markets;
- Allow interim boycotts in certain/limited circumstances which may assist producers' ability to progress negotiations;
- Increase the threshold for primary production bargaining from $5million;
- Allow for a more accessible notification process for primary producers;
- Increase the ability for peak bodies to commence and progress collective bargaining and boycott applications, on behalf of their members;

[20] NFF submission (2015), Harper Review of Competition Policy.

- The Government should amend section 46 of the *Competition and Consumer Act 2010,* replacing the existing purpose test with an 'effects test'; and
- Industry codes should be maintained and improved where they demonstrably enhance the competitive process.

# 12. Investment

***Foreign Investment into Agriculture***

The NFF supports foreign investment in Australian agriculture and recognises the important role it has and will continue to play in a vibrant agricultural supply chain. To date, foreign investment has proven to be overwhelmingly positive for Australian farmers and regional communities. It has delivered significant amounts of capital into our production systems at a time when finance from the banks has been harder to access. This capital has improved our efficiency and ensured that our farmers can continue to compete in a highly distorted global marketplace for agricultural commodities.

The NFF recognises a balance must be struck between ensuring incoming investment is thoroughly screened to determine whether it is in the national interest, and too much regulation on such investment acting as a deterrent. In this regard, whilst the NFF welcomed the recent increase in screening regulation, as discussed below, there are opportunities to streamline the Foreign Investment Review Board (FIRB) procedures to minimise the burdened placed upon investors by screening regulation.

***Recent Amendments to the Foreign Investment framework***

The NFF welcomed the recent amendments to the *Foreign Acquisitions and Takeovers Act 1975*, as they will help to ensure investments are in the national interest. The safeguards enacted by the amendments, including the $15 million cumulative screening threshold for agricultural land and $55 million for agribusiness, help to ensure that due consideration is given to foreign ownership coming into the sector. While the NFF sought a full cost recovery model, the NFF welcomes the capped contribution investors must make to the cost of screening their application. Doing this will help to maintain adequate resources within the FIRB.

Beyond these changes, the NFF also welcomed the establishment of the Agricultural Land and Water Register, which requires foreign investors to register their land and water purchases. Collecting this data will aid policy development with regards to foreign investment into the sector by presenting a facts based picture of the investment ownership landscape. Additionally, such a register will assist in addressing community concerns around investment in Australian agriculture, where misconception is commonplace.

***The National Interest Test & Foreign Investment Review Board Procedures***

Broadly speaking, the NFF seeks a transparent and effective National Interest Test, which is applied to investors in a timely and consistent manner by the FIRB. To this end, what constitutes the National Interest Test must be publicised to the greatest extent possible to ensure both the sector and investors clearly understand the criteria their applications will be assessed against.

More specifically, the NFF seeks a number of changes to the operation of the FIRB. Upon making an approval decision, to the greatest extent possible without breaching commercial confidentially requirements, the FIRB should make available a thorough explanation with regards to their decision making process. Included in this should be an explanation of the interpretation of the National Interest Test and the weightings placed on the various criteria. Clearly articulating the outcomes of applications will not only give confidence to the sector, but will ensure future investors have a clear understanding of what is expected of them when seeking to invest. This will in turn improve the quality of application received by the FIRB, benefiting both the regulator and the applicant.

Further, the NFF recommends that the agricultural sections within the FIRB's annual reports be expanded. For example, the report currently gives aggregated details of the level of investment in real estate by state, but doesn't give state data on agricultural investment. With the development of Register

of Foreign Ownership of Agricultural Land and Water, aggregated details on the types of agriculture that are being bought into would be available. Providing more information on agriculture in the annual reports may also be assist in alleviating public concerns/misconceptions on foreign investment in agriculture.

***Recommendations**:*

- What constitutes the National Interest Test must be publicised to the greatest extent possible to ensure both the sector and investors clearly understand the criteria their applications will be assessed against;
- Upon making an approval decision, the FIRB should make publically available a thorough explanation with regards to their decision making process; and
- The agricultural sections within the FIRB's annual reports should be expanded to reflect the increased information made available by the development of Register of Foreign Ownership of Agricultural Land and Water.

# 13. Workforce

Australian businesses face a distinct disadvantage in competing with international competitors when it comes to labour input costs. Australia has the highest minimum wage in the OECD, and some of the highest labour costs in the world. This is why flexible regulation and streamlined and efficient processes in place to manage workplace relations are so important in the Australian context to ensure that Australian agriculture is globally competitive.

Small businesses, including on-farm and throughout the supply chain, face a minefield when it comes to employing staff, through a complex web of federal employment, safety, migration and taxation laws, supplemented by State laws on a range of issues from training to workers' compensation. Increasingly, the focus of government and regulators is on passing employer liability across the supply chain, so that it is no longer enough for employers to mind their own business – they must peer into the practices of others. Resources are critical to the capacity of an organisation to manage in this environment – and in the small or family business context, many 'best practice' ideals are unable to be achieved for want of time or money.

**Workplace Relations**

The below table extracts what the NFF considers to be "red tape" in the *Fair Work Act 2009* (FW Act).

| Subject matter | FW Act provision | Problem | Solution |
|---|---|---|---|
| Modern awards – 4 yearly review | 156 | The requirement to review all awards every four years is excessive. The process takes almost four years, meaning that both FWC and the parties are in a perpetual cycle of review. The result is an extraordinary allocation of resources to a process of identifying and advocating for changes that few actually want, most could live without or achieve through enterprise bargaining, and that more often than not increase labour costs. | Abandon the 4 yearly requirement and revert to changes on application (perhaps with a statutory requirement to update awards every 10 years) to maintain currency. |
| Modern awards – 4 yearly review of default terms | 156A | As discussed above, a requirement to review terms every 4 years means that Modern Awards are in a constant state of review. This is a significant impost on all participants in the workplace relations framework both in terms of time and resources. | A new, issues-based, process is required:<br>1. APRA notifies FWC if a fund's eligibility for default fund status is in question;<br>2. Notification of proposal to vary list of affected awards published by FWC;<br>3. Interested parties make submissions;<br>4. FWC determines on the papers. |
| Modern awards – standing | 158, 160 | Standing to apply to vary, revoke or make a modern award is limited to certain individuals and registered organisations. | Anyone with an industrial interest in a modern award should have standing to make an application in relation to the award. |
| Notice of representative rights | 173 | The notice of representational rights must only include certain prescribed content. Failure to meet this requirement invalidates the entire | Provide that substantial compliance with the notice requirements is sufficient where the defect does not materially |

| Subject matter | FW Act provision | Problem | Solution |
|---|---|---|---|
| | | agreement making process. This is an unnecessarily strict approach with severe consequences for employers who must start all over again if found not to have correctly issued the notice. Form has triumphed over substance and reform is needed to restore the emphasis on facilitating the making of enterprise agreements. | affect the capacity of employees to make an informed decision when they cast their vote. |
| Agreement making process | 180(2)(a) | Currently, employees must be given access to the proposed agreement and any other relevant materials during the 'access period'. Agreements have been refused because employees received their materials at an earlier time (eg when the notice of representational rights was issued). The underlying principle is that employees should have the information they need to cast an informed vote on an enterprise agreement in sufficient time before the vote is held. It does not, and should not, matter, that the information is provided to them at the outset of bargaining or in the intervening period, as long as there is sufficient time for them to consider the material before the vote. | Promote efficiency and the making of enterprise agreements by allowing relevant agreement materials to be provided at any time from the issue of the notice of representative rights to 7 days before a vote is held to approve the agreement. |
| Application for approval | 185(1) | Once an agreement is made, an employer 'must' apply for its approval. An employer whose circumstances have changed and who no longer seeks agreement approval must nevertheless apply, but then discontinue the application under s588. This is emphasis on form over substance. An employer should not be compelled to seek approval of an agreement in every case and employee representatives should not be able to apply for agreement approval absent the consent of the employer. | Facilitate, but do not require, the making of applications for agreement approval. In the case of applications by employee bargaining representatives, require consent of the employer upon filing of the application. |
| Consultation over change | 205(1)(a) | Recent amendments require formal consultation over every change to regular rosters and ordinary hours is onerous and overly prescriptive in what the consultation must involve. Changes that are made in accordance with the relevant modern award or enterprise agreement are within the discretion of the employer. Employers need to be able to manage their business without undue delay. | Require formal consultation only in relation to major workplace change. |
| Scope of protections | 341(3) | The general protections extend to the workplace rights of 'prospective | Ensure that IFAs can be offered as a condition of engagement. |

| Subject matter | FW Act provision | Problem | Solution |
|---|---|---|---|
| | | employees'. In part, this is explained as a way of ensuring that IFAs cannot be made a condition of engagement. While the drafting may be legally correct, the provision is opaque and its effect is not clear for most users. In any event, there is a real question as to why IFAs should not be permitted to be made a condition of engagement, particularly where it leads to higher wages and more flexible working conditions. The strong safeguards in relation to IFAs reinforce the merit of promoting IFA use more widely. | |
| Hearings | 399 | Despite a shift in focus toward dealing with unfair dismissal claims on the papers, hearings remain common and costs high. | Require parties to prepare a statement of agreed facts to narrow issues for hearing. |
| Appeals | 400 | Unfair dismissal decisions are largely discretionary and appeals rarely succeed. In 2013-14, appeals were dismissed in 62% of matters.[21] In the meantime, parties are put to significant cost and effort in relation to proceedings. | There should be no appeals from unfair dismissal decisions. |
| Costs | 401(1A) | Costs can be awarded against a representative who encourages a person to respond to a claim that has no reasonable prospects of success. This is inconsistent with FWC Rule 14A, which requires a response to be filed. | Remove references to 'response' to claims. |
| Strike pay | 470 | The principle of no payment for industrial action is sound. The strike pay rules, however, are complex and open to manipulation. Employers are likely to find it difficult to prove that an employee's refusal to work overtime contravened the award, agreement or contract: most instruments do not require employees to work overtime, but employees are paid for the prospect nevertheless. Calculating pay reductions in relation to partial work bans is highly complex. FWC can overrule the approach taken by the employer. This diverts significant attention from productive work. | Simplify the strike pay rules by adopting the principle in legislation and leaving the calculation to the parties. A dispute about payment of entitlements can be dealt with in an eligible court. |
| Partial work bans | 471(4), 472(3)(b) | To avoid calculating reductions in pay, employers can give notice of refusal to accept partial work and then withhold pay for the entire period of the ban. Regulations | Simplify the strike pay rules. Provide for a Statement of Rights to be issued by the ballot agent at the time the protected action ballot order is issued. The |

[21] FWC Annual Report 2013-14, p42

| Subject matter | FW Act provision | Problem | Solution |
|---|---|---|---|
| | | prescribe the form of the notice, its content, and how it can be given. This is highly complex, despite intending to make things easier for employers. If the notice is not given correctly, the employer is back to square one. The process requires simplification. | Statement can summarise the prospect of loss of pay due to strike action so that employees are aware of their rights. |
| Notice of entry | 487(3) | 24 hours' notice of entry to investigate suspected contraventions is very short: employers will need to undertake their own inquiries, notify employees where entry is for discussion purposes, determine what information about any suspected contravention exists and where it is kept, and seek legal advice about their own rights in relation to right of entry. Prioritising union right of entry over other business priorities is unproductive and in most cases, unnecessary. | Require a minimum notice period of 3 days unless an exemption certificate is granted. |
| Standing | 526(3) | There is no capacity for employers to apply to the FWC to deal with a dispute over stand down. | Employers should have capacity to apply. |
| Notification to Centrelink | 530 | The case for notifying Centrelink of redundancies has not been revisited for some time. This is a largely procedural requirement of questionable value, triggering FWC's power to prevent dismissal. | The requirement should be reviewed and removed if found to be redundant. Modern awards already require consultation. |
| Notification to unions | 531 | The requirement to notify relevant unions also requires review. It creates practical compliance difficulties where employers do not know which employees are union members. | The requirement should be removed or reviewed. Modern awards already require consultation. |
| Payslips | 536 | Many employees are paid the same amount, by EFT, every pay period. Employers are required to ensure payslips are issued within a one day period each time, whether or not this is what the employee wants. This is a regulatory burden. | Where there is predictability of pay, permit parties to agree that payslips will be provided on request. |

**Work health and safety laws**

Similar issues to those outlined above can be found throughout the *Work Health and Safety Act 2011* (WHS Act) and associated material, which together comprise an Act, Regulations, 23 Codes of Practice and 46 Guidance Materials. These documents, and the additional 29 'fact' or 'information' sheets provided to explain how to comply with the regulatory regime, are useful for safety management professionals, but for the small business person are simply another thing to 'stay on top of'. And yet the regulatory regime requires, as part of the work health and safety duties, that all officers in a business or undertaking maintain an 'up to date knowledge'. The current settings in the WHS Act hinder the capacity of businesses to comply with their obligations, impeding employment.

A comprehensive review of the level of penalties and the application of the Criminal Code to breaches of the WHS Act is urgently required. Some penalties in the WHS Act are wholly disproportionate to the nature of the offence, even where there is no high risk of serious harm or element of recklessness:

- the penalty for engaging in discriminatory conduct for a prohibited reason is a maximum of $100,000 for an individual and $500,000 for a body corporate. The penalty for a comparable offence under the FW Act is $10,200.
- a business can be liable for up to $500,000 for providing wrong information about work health and safety rights (compared with $10,200 under the FW Act). And yet the maximum penalty for impersonating an inspector is $10,000.
- a delay in the appointment of Health and Safety Representatives, even in a small business with only a few employees, can result in fines of up to $18,000.

From 2017, Regulation 335 will impose new hazard labelling requirements on agricultural and veterinary chemicals prescribed and approved by the Australian Pesticides and Veterinary Medicines Authority (APVMA) under the *Agricultural and Veterinary Chemicals Code Act 1994* (AVCC Act). These chemicals already come with comprehensive labelling reflecting risk assessments undertaken by the APVMA as part of the regulatory process for approval. The chemicals come to market as final products, for particular uses (as opposed to general industrial chemicals that have a variety of potential uses). The introduction of hazard labelling is unnecessary given the sophisticated approach to managing the risks associated with these chemicals that is already in place. It will represent a duplication of regulation, with an estimated cost of $20 million to the manufacturing industry that will be passed directly on to the farm gate. It may also introduce a conflict of laws given the current prohibition in the AVCC Act in relation to the display of information that conflicts with labels authorised by APVMA. As with the current exemption for therapeutic goods in Regulation 335, chemicals regulated by the AVCC Act should be exempt from the labelling requirement in Regulation 335.

The regulations to the WHS Act should be reviewed to remove duplication or unnecessary regulation. Reducing the level of prescription in many cases will have no negative effect on health and safety of workers but will make complying with the WHS Act easier. For example, regulation 21 prescribes a minimum amount and type of training that must be provided each year. The result is likely to be, in many cases, "training for trainings sake". Section 19 of the WHS Act already imposes a primary duty of care, with express reference to appropriate training. Taken together with regulation 39 and the positive duty of due diligence, the law is sufficiently clear that adequate training should be provided in the workplace.

Many of the regulations to the WHS Act are unworkable or too hard to comply with. For example, Regulation 49 appears impossible to comply with, as it imposes a strict liability offence for accidental exposure despite the presence of safe systems of work in the workplace. The effect of Regulation 53 should be reviewed in relation to the agriculture sector. As currently drafted, it would prevent farmers from provisioning for fuel ahead of periods of drought or low cash flow. The requirement to provide audiometric testing every 2 years to a prescribed standard is a costly requirement given that would require travel and accommodation in addition to medical expenses. In many cases, the benefits of this regulation are unlikely to outweigh the costs. These are just some examples of how over-reach in regulating the issue of work health and safety has compounded the regulatory burden on the farm sector.

Many farm businesses are not clear on their obligations under the WHS Act but fear the financial implications of a safety incident and subsequent prosecution. Rather than risk it, they choose not to employ any labour at all. This is a clear barrier to growth and productivity in the agriculture sector. The Decision Regulation Impact Statement for the WHS Act noted in 2009 that small businesses have low rates of knowledge of government regulations and consequently low compliance with WHS regulations in general. Consideration should be given to an alternative model for regulating small business safety to align community expectations with the capacity of small businesses to comply, particularly in light of the level of penalties which send a message to business to "comply or we will shut you down".

In particular, small businesses should be exempt from the current consultation and representation framework and new provisions specifically designed to accommodate the needs of small businesses should be developed in their stead. The appointment of a Health and Safety Representative in a workplace of 2 employees is unnecessary, costly and disproportionate to the need to ensure consultation with workers. Consultation in small workplaces happens all the time, informally and only where necessary in a formal setting.

Similarly, record keeping requirements including worker consultation are frequently informal in the agriculture sector. Written records of daily "toolbox" discussions are only relevant in workplaces that are large enough to support them. Exempting small business from this requirement or providing that it only applies to high-risk activities would reduce the overall regulatory burden on agriculture without increasing risks to health and safety.

**Migration laws**

Migration programs provide an essential source of labour for many Australian farmers. The seasonal nature of agriculture, and its location in rural and remote areas of Australia, often makes it difficult to attract and retain Australian workers. For many farm businesses, low margins limit the capacity to offer higher wages as a means of incentivising agricultural work.

Work in agriculture ranges from highly skilled to unskilled. People working in agriculture are typically farm owners and family members, share farmers, itinerant workers, students and other local casual workers, grey nomads, skilled migrants, backpackers and foreign workers temporarily in Australia to support a better life in their home country.

The ability of farm businesses to fill skilled labour shortages with the use of overseas workers on the 457 visa program is limited by its reliance on the ANZSCO coding system, which was never intended to define current industry skills needs exhaustively. Many skilled agricultural occupations are simply not on the Consolidated Skilled Occupations List (CSOL) which use to determine eligibility for 457 visas. As a result, agricultural industries have dedicated years negotiating labour agreements to access workers they desperately need. For example, a head stockperson is a skilled job, but sits between the ANZSCO codes for "Livestock farm worker" (low skilled) and "Livestock farmer" (degree qualified). Such a person may be variously employed as, and describe themselves as "leading hand", "overseer", "head stockperson", "head stockman", "head stockwoman", "assistant manager", yet all do much the same job and require a high level of skills. They are unlikely to be degree qualified – and not being listed on the CSOL means they are prima facie ineligible for a 457 visa. Changing the 457 visa program so that the CSOL can be varied to reflect new skilled occupations is vital. This one change would remove the largest single barrier to the 457 visa programme faced by the agriculture sector overnight.

Another issue which is more about red tape than good regulation is labour market testing. Labour shortages in the agriculture sector are nothing new. The labour market testing regime makes no acknowledgment of this circumstance. Instead, it applies across the board, to all sectors and industries seeking access to migrant workers, both in relation to the 457 visa program and the Seasonal Worker Program. Recent changes negotiated in the context of the China Australia Free Trade Agreement are likely to have increased the red tape surrounding labour market testing, by extending its reach even further.

Labour market testing requirements, particularly for short-term migration programs, represent a large commitment for little return. Approved Employers under the Seasonal Worker Program prepare a recruitment plan for each group of workers they seek to employ, place job advertisements for a minimum 2 week period, and report back to the Department of Employment, which administers the Program, before proceeding to recruit from overseas.

The requirement to advertise and offer work to Australian jobseekers before seeking to recruit foreign workers is problematic. Farmers are required to advertise jobs broadly, eliciting numerous responses from foreign workers and only very few from Australian workers. Each job application must be reviewed and responded to, requiring allocation of significant time and resources, when the reality is that most Australians are not looking for jobs that involve hard, physical work in rural, regional and remote areas. In some cases, our members tell us that Australian workers who have applied and been offered a job have refused the offer, advising that the application was only made to meet their job application quota for the month.

***Recommendations:***

- Streamline the FW Act to remove unnecessary red tape, as set out in the table above.
- Create a separate, simpler work health and safety regime for small business;
- Review the penalties regime in the WHS Act and remove any penalties that are disproportionate to the offence;
- Change the 457 visa program by allowing the CSOL to be varied to reflect new skilled occupations; and
- In regions and /or industries where there is a demonstrated labour shortage (for example, regions eligible for the Seasonal Worker Program), remove labour market testing requirements.

## 14. Exports

Australian agricultural competitiveness in the coming decades will be largely impacted by its performance in overseas food and fibre markets, and our ability to meet the demands of an increasingly informed consumer.

Australian agriculture is already strongly export oriented, with around 60 percent of agricultural production exported to overseas markets. Agricultural exports amounted to $43.6 billion in 2014–15.

Despite this, often technical barriers to trade, including certification and protocol delays, can undermine hard-fought market access achievements. As mentioned in chapters 8 & 9, Australian exporters often face animal welfare and biosecurity regulations that impose administrative, compliance and monetary costs. Costs associated with regulation are often passed back onto the farmer in the form of lower commodity prices.

There are a range of other areas of regulation that further impact of exporters of food and fibre. From just a horticulture perspective, the following areas may present possible barriers[22]:

- Tariffs;
- Market Access Prioritisation processes;
- Cost Recovery;
- Inspection regimes;
- Packaging and labelling requirements, especially the provision of packing dates;
- Technically valid pest lists in protocols;
- Probe Numbers;
- Volume loads in land based cold treatment rooms;
- Acceptance of non USDA approved containers for In Transit Cold Treatment;
- Completion of In Transit Cold Treatment after arrival; and.
- Certificate of Origin requirements.

With this mind, the Export Council of Australia (ECA) have detailed the costs of exporting beetroot from Victoria to Dubai. According to the ECA, exporting a 1 x 20ft container of beetroot from Victoria to Dubai attracts a fee of approximately AUD12000. The actual sea freight cost from Melbourne Dubai is approximately AUD4000.00. The balance of AUD8000.00 is made up of quarantine, freight forwarder, logistics, documentation and local fees[23].

**Recommendations**

- The PC consult with NFF commodity members with regards to specific regulatory impediments within the export process that could be amended to reduce their negative impacts.

[22] Voice of Horticulture (2016), Submission to Productivity Commission inquiry into the regulatory burden on farm businesses.

[23] Export Council of Australia (2016), personal correspondence with the NFF.

## 15. Farm Case Studies

In the NFF's, view the PC should undertake, or recommend that the Government undertake, a set of detailed case studies on Australian farms with regards to the regulatory burden imposed upon them. The farms should be representative of a range of production types, commodities and jurisdictions. Doing this will further facilitate the identification of regulations that present an excess and tangible imposition of the operation of farm business.

The NFF is happy to facilitate in the identification of suitable farm businesses should the need arise.

***Recommendation:***

- The PC should undertake, or recommend that the Government undertake, a set of detailed case studies on Australian farms with regards to the regulatory burden imposed upon them.