



National Farmers' Federation

Submission to the Productivity Commission Draft Report on the Regulation of Australian Agriculture

19 August 2016

NFF Member Organisations





National Farmers' FEDERATION

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 \$51 billion – a 6 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.

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Executive Summary

Land use regulation

Crown land and pastoral leases

Land tenure is a significant barrier to further capital investment in agriculture. Inflexible conditions of use, ever increasing annual rents and cumbersome and expensive processes to convert to freehold tenure are holding back improved productivity and diversification. However, we note that freeholding is not always a better option for farmers. In many cases the costs of freehold conversion outweigh the benefits

Pastoral lease conditions can be overly onerous, or unnecessarily restrict opportunity for improvements in productivity or diversification of enterprises. Land use regulation, whether through planning instruments or workable vegetation laws are for example a better option and provide greater flexibility than strict lease conditions.

The valuation framework for changes to land tenure should acknowledge that in the main, states hold limited residual value in lease tenure in addition to the additional property rights that may be conferred in the conversion process.

It is important the governments transparently set rents for crown lands and pastoral leases using consistent pricing principles that recognise the unique social, economic and environmental contributions made by lessees.

Land use conflict

The call for policies to protect agricultural land are in effect an alternative for the strategic land use planning that takes into account longer term values for land use.

In the NFF's view, there is an opportunity for the Commission to be more strident in its views about the importance of fair, balanced and science based regulation to inform resources sector developments. NFF encourages the Commission to make recommendations that support greater balance and the protection of farmers' property rights in relation to land access. NFF supports empowering farmers in their negotiations around access to land for mining and gas exploration. A right to say yes or no, that is reasonably exercised, will provide farmers with greater protection in these negotiations.

Planning, zoning and development assessment

The Commission highlights the importance of strategic land use planning – to address the growing issues of land use conflict.

Local, state and commonwealth governments all have a role to play to ensure that strategic land use planning recognises the important role that the agriculture sector plays – and will continue to play - in the economies of our local communities, our states and territories and our nation. Agriculture delivers long term value to the Australian economy – and this value must be recognised over short term economic gains that might be achieved through land use change.

Environmental regulation

The NFF supports a risk based, landscape scale approach to environmental management, that ensures the costs and obligations faced by landholders are proportionate to the environmental impacts of their proposed actions.

The current framing and administration of the EPBC Act means that the Commonwealth cannot provide certainty that low risk farming activities (such as those that may be covered by codes or exemptions at a state level) are not required to be referred, triggering an expensive regulatory process for farmers.

National, state and local environmental laws impose considerable costs, and opportunity costs on farmers. Where the community is seeking particular environmental outcomes – such as native vegetation retention or biodiversity management - governments should achieve them by buying environmental services. This would go a long way to address the fundamental inequity that forms the basis of the native vegetation management debate.

Efforts to improve information flow and increase the amount of extension resources are congruent with NFF recommendations to improve the understanding of farmers about their regulatory responsibilities under environmental laws.

On-farm regulation of water

Water reporting

Regulations relating to the provision of water information imposes regulatory burden and costs associated with the collection, collation and reporting of data by the regulated entity. While in the main this is not farmers (but rather Government agencies and irrigation infrastructure operators) the costs of these activities are passed on to farm businesses through water charges, consistent with the national water charge rules administered by the ACCC.

Regulating farm access to water

The NFF's view is that pursuit of nationally streamlined or harmonised water regulations to define water access entitlements is not desirable. As the Commission notes, catchments are diverse. They are diverse in terms of hydrology, infrastructure and historical development and the evolution of regulation that govern shares, access and use. These factors combine to influence the characteristics of the property right that is defined in relevant state water access entitlement frameworks.

In relation to water policy and management, decisions should be made by the least centralised level of government possible.

Regulating farm use of water

Regulation of farm use of water is not a significant issue for the agriculture sector. Consistent with the statutory water access and use rights that are established in state water management laws, farm businesses should be left to make decisions about how best to use water to meet their own productivity and profitability goals.

Regulation of farm animal welfare

Animals play an important role in many aspects of Australian life and the Australian community has high expectations of our animal welfare system. Farmers care for their animals and are themselves strong advocates of good animal health and welfare outcomes.

The NFF is advocating for the respectful treatment of animals and supports the proactive implementation of welfare benchmarking across industry. The NFF also emphasises the importance of Government working collaboratively with the sector to achieve animal welfare standards that meet joint industry and community expectations.

The NFF is of the opinion that those community expectations and community perceptions need to be researched to fully comprehend how the agricultural sector can better communicate animal welfare outcomes.

Regulation of technologies and agricultural and veterinary chemicals

Access to genetically modified organisms and products

The NFF perceives the potential of gene technology as a valuable tool within agricultural production systems and supports gene technology research and development. The outcomes of this R&D can contribute to meeting Australia's future challenges in areas such as economic growth, human health and environmental sustainability.

The NFF firmly advocates that farmers should retain the opportunity to adopt the method of production best suited to their business needs, be that GM, conventional, organic or any combination of these methods. In protecting the integrity of a farmer's decision, it is important that agricultural supply chains consider the implementation of plans to allow all producers to continue to meet the requirements of their chosen markets.

Telecommunications infrastructure

Quality telecommunications are currently the basis of business activities such as online banking, weather information, trading crops and livestock, online learning, webinars and the maintenance of national livestock traceability databases. In future, telecommunications infrastructure will become even more important: New technologies, underpinned by access to communications infrastructure, have the capacity to revolutionise agriculture and to turn around flagging productivity growth.

Although regulated access to telecommunications cannot be considered additional red tape that hampers the productivity of agribusinesses, its absence has serious productivity implications for farmers that live and work in an environment without a functioning telecommunications market. Farmers live and work in a regional setting with inequitable access to telecommunications: Service is less reliable, more expensive and has a lower quality than service in urban settings. There is a clear demand and dependence on reliable, affordable and sufficient telecommunications in the bush that is not met by the current telecommunication

market in regional and rural Australia in the absence of a data provision in the USO.

Access to agricultural and veterinary chemicals

The NFF is of the view that new agricultural chemicals and veterinary medicines (agvet chemicals) can improve the productivity and sustainability of Australian agriculture and supports reform that facilitates access to state-of-the-art chemicals.

As outlined in the Commission's report, operational improvements within the APVMA can deliver time and cost reductions. Australian farmers need a system of chemical registration that facilitates the introduction of new chemicals onto the Australian market in a timely and cost efficient manner. Australian farmers compete in international markets, and it is important that they have access to the tools which allow them to produce safe fresh produce in a cost effective manner. The costs of registration and timeframe around this process should not deter registrants from seeking to introduce new chemicals to the Australian market.

National harmonisation of control of use of agvet chemicals

Off-label use currently differs dramatically between different jurisdictions, putting farmers operating in states and territories that have strict off-label use regulations at a competitive disadvantage.

Access to agvet chemicals for minor uses

The NFF has for a long time advocated for a facilitation of the admission of minor-use chemicals that would otherwise be too costly to register. There is a clear need to streamline the registration and approval process of minor use agvet chemicals: there currently is a huge opportunity cost for farmers who are not able to access the most efficient, safer and sustainable agvet chemicals.

It is crucial though that regulation of minor use agvet chemicals as well as of off label use of agvet chemicals considers residue implications. The NFF suggest to include a recommendation into the Commission's final report on how to best address this issue. Rapid response to new, unforeseen biosecurity issues is critical for agricultural productivity and protecting trade.

Labelling of agvet chemicals under work health and safety regulations

The NFF reiterates its concern that new hazard labelling requirements from 2017 onwards should not apply to chemicals prescribed and approved under the *Agricultural and Veterinary Chemicals Code Act 1994*, an outcome that can readily be achieved by amending regulation 335 of the WHS Regulations. As a matter of principle, the NFF does not support Codes of Practice and Guidance Materials for so long as their purpose is to facilitate prosecutions rather than improve safety outcomes.

Biosecurity

The NFF considers that prevention, early detection, rapid response and working collaboratively across both industry and government is required to protect Australia's 'clean, green' image. Major biosecurity incidents affect not only the environment and primary producers, they have the potential to affect all of Australia (including, for example, the tourism sector, emergency services, the police), and thus require a whole of government approach. Good biosecurity needs to be outcome-focussed, not process-focussed.

The NFF is of the view that good national biosecurity system needs to be the responsibility of everyone in Australia. This requires a change in culture and a change in the current biosecurity approach.

The NFF is aware of numerous anecdotal reports of incursions on farm by electricity, wind, water, phone and mining companies and also the increased illegal access by activists seeking to pursue a specific cause. This is a significant concern to the farming industry and must be addressed.

There should be strict and controllable measures in place to prevent any unauthorised access to farms whether by service authorities, miners or activists who illegally enter and trespass onto farms.

Transport

Heavy vehicle access

The move to a single National Heavy Vehicle Regulator (NHVR) is a step in the right direction. However, there are a number of barriers, outlined in the draft report, that inhibit the efficiency and reliability of transport in Australia, impeding on agricultural competitiveness. The timeframe for permit processing does not accommodate the business needs of farmers who must have capacity to operate on short notice where required. Options for reducing the volume of permits required are strongly encouraged.

Regulatory restrictions that limit access to certain roads based on vehicle size, configuration and operating hours limit the efficiency of road transport, as does the application of different regulations in different jurisdictions. These restrictions contribute to the last and first mile access issue and make it difficult for transport companies to run most efficient vehicles across state lines.

Road-user charging

In principle, the NFF supports a road user charging system. The NFF considers that current methods of road funding through a combination of registration fees and fuel-based charges are inequitable and do not reflect the actual cost of individual vehicles to use the road network. The Road Fund model and hypothecation of revenues outlined in the Commission's inquiry into public infrastructure could be considered; however, the NFF would like to see more evidence about how this would play out in practice and the effects of road user charging on rural and remote communities.

National Heavy Vehicle Regulator (NHVR)

While safety is imperative, streamlining and simplifying regulation of agricultural machinery on public roads is important. Permits can be timely and costly to obtain and can hinder the flow of work on farms. Consideration of measures to overcome this such as gazettal notices and other exemptions are encouraged. Further, coordination of regulation between states will assist to reduce confusion.

Rail

The rail grid across Australia is still largely determined by state and territory boundaries, dating pre-Federation, and has a system of multi-gauge railways. It is made up of many disconnected lines that hamper its efficient use between state and territory boundaries and between rural areas. In addition to variations in gauge

standards, weight and size limits differ between some states and territories. It would be desirable to ensure that gauge sizes as well as weight and length limits of trains are harmonised to the overall benefit of Australian agriculture.

Ports

Most ports in Australia are privatised and regulated through a regime to constrain their monopoly power. However, not all ports are governed by effective regulation, giving some port authorities significant market power that can lead to increased transport prices. Regulators and regulatory frameworks need to consider the market power of port services chains by applying pricing oversight and, potentially, price regulation

When privatising assets, state governments juggle two contradicting goals: State governments want to maximise privatisation price tags while protecting Australian companies from the monopoly power arising from privatisation.

It is critical to the competitiveness of Australian agriculture to have easy and reasonably priced access to key infrastructure such as ports as there is no alternative to using natural monopolies.

Coastal shipping

The NFF supports this recommendation and agrees with the findings of the Productivity Commission in relation to the need for coastal shipping reform.

Biofuel

The NFF recognises that the establishment of a biofuels industry based on ethanol has the potential to provide the Australian community with a number of benefits including:

- Economically stable, vibrant, diversified regional communities;
- Significant improvement in air quality particularly in metropolitan areas, through the use of ethanol in petrol, with flow on environmental and health benefits;
- Substitution with a stable source of locally produced renewable fuel for imported products;
- Use of renewable feedstocks for fuel, reducing dependence on limited fossil fuels and reducing contributions to the greenhouse effect;

Food regulation

Country of Origin Labelling

The NFF supports mandatory country of origin labelling (CoOL) as it goes some way to rectifying an information asymmetry which can benefit producers of food products of mixed or imported origin.

In terms of being practical to implement and minimising costs of the CoOL, the NFF supports the use of an existing classification of foods for which labelling is mandatory, as opposed to all foods or the specially designed priority/non-priority items list.

Egg stamping

The NFF endorses egg stamping as the preferred method of ensuring traceability. Food traceability is an important component of the food safety regime and the trend is towards enhanced traceability. To retreat from this would be a retrograde step.

Food safety and supplier audits

The NFF agrees that the ability for government to reduce the burden of regulatory audits is limited by importing country requirements and that significant steps have been taken by State, Territory and Commonwealth authorities. The Commonwealth should seek to negotiate more flexible arrangements in trade agreements.

Despite the limitations, overarching national recognition of quality assurance schemes for Australian agribusinesses could make auditing and legal compliance easier and cheaper by streamlining existing farm auditing. This would also facilitate traceability of produce along the supply chain and simplify certification of production regimes that promote good outcomes such as environmental sustainability and animal welfare. A first step towards overarching recognition would be a comprehensive feasibility study of current auditing requirements.

Labour regulation

Seasonal Worker Program (SWP)

The SWP is a migration program that has a strong aid value by facilitating work opportunities in Australia for Pacific Island nations and Timor-Leste. In contrast to the New Zealand equivalent of the SWP, demand for the program in Australia has been slow to rise, despite demonstrated labour shortages across Australian agriculture. This is due to the high regulatory burden of the program on employers as well as the high costs involved. Consideration should be given to transitioning to an industry-owned model, to support greater efficiency and confidence in the SWP. Ultimately, overcoming the range of barriers to uptake is critical if we are to grow the SWP to its full potential.

Superannuation for temporary residents

The NFF agrees that more needs to be done to ensure Australia's superannuation system is fit for the future. It is extraordinary that the income threshold has remained static for almost 25 years and the current level bears no resemblance at all to the tax-free threshold. The complexity of changing the superannuation regime is often seen as a barrier to reform. On its own, complexity is not a reason to resist change where that change is clearly in the public interest.

457 visa training requirements

The NFF agrees with these observations. It is already very difficult for farmers to access skilled workers under the 457 visa program. Making this even more difficult will impede the future growth and productivity of the agriculture sector.

Calls to expand the Consolidated Sponsored Occupations List (CSOL)

Inability to retain good workers who come to Australia on temporary visas is a common frustration in the farming community. The NFF supports greater access to permanent visas for temporary visa holders, including through labour agreement concessions where these can be made available. Such an approach would ensure

that valuable and experienced workers are not lost to the regional economies in which they are based.

Labour Market Testing

Labour market testing is an area of key concern to the NFF. Labour shortages are widely acknowledged in the agriculture sector – recent figures from the Department of Foreign Affairs and Trade estimate that labour shortages cost Australian farmers \$700 million each year. Despite this acknowledgment, no concession is made for the sector in relation to labour market testing. This needs to change to alleviate the significant regulatory burden currently shouldered by the sector in the context of labour regulation.

Checking migrant visas

The NFF supports efforts by government to make it easier for employers to check migrant visa work rights and help both employers and employees understand their responsibilities under migration and workplace law.

Labour hire companies

Labour hire companies are important in agriculture as the seasonal nature of agricultural produce can lead to a high demand for large numbers of workers during certain, short periods of the year. Large numbers of workers in rural and regional Australia are difficult to source and labour hire companies assist to ease the burden of sourcing workers on farmers.

The NFF notes that the Commission has not made a recommendation for licensing of labour hire companies. The NFF does not support licensing of labour hire companies. Previous Productivity Commission recommendations dealing with repeated avoidance behaviour by company directors should be considered instead.

Workplace relations

The NFF supports the majority of recommendations made by the Productivity Commission Workplace Relations Framework review. Labour regulation is a key impediment to competitiveness and productivity in the agriculture sector. We encourage the Government to implement recommendations for reform without delay, including in relation to the modern awards objective and a more sensible approach to reviewing modern awards than the current, heavily resource intensive approach that is delivering more and more red tape with very few beneficial outcomes for Australian farmers.

Work, health and safety

The NFF supports reform of Work, Health and Safety laws which are complex, onerous and very difficult to change. WHS laws should be outcomes-based, with the broader objective of seeking to improve safety outcomes in the workplace. Business bears the weight of compliance with WHS laws, but is very poorly represented on the overarching body (Safe Work Australia has 15 members, of which only 2 are from the business community). The primary outcomes sought to be achieved by current WHS laws are higher prosecution success rates and penalties set at a level that would send many businesses to the wall.

Competition regulation

Rice marketing arrangements

The NFF does not support the Commission's recommendation regarding rice marketing arrangements in NSW for two reasons. The first is a matter of process. Unlike the *Marketing of Potatoes Act 1946* (WA), the Commission did not directly canvass the inclusion of the *Rice Marketing Act 1983* (NSW) in the issues paper. The rice marketing arrangements in NSW are currently under review by the Department of Primary Industries and this process should be respected.

The second ground for opposition relates to the Commission's evaluation of the evidence for and against the vesting arrangements and the Sole and Exclusive Export Licence (SEEL).

The NFF believes that the Commission's recommendation is at odds with the conclusions of other reviews conducted over many years into vesting arrangements and the SEEL. Further, the NFF believes that the NSW DPI review currently underway is the appropriate forum to determine the future of vesting arrangements and the SEEL.

Sugar marketing arrangements

The NFF believes that the Commission has not accurately represented the nature of the amendments made by the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*.

Cane growers are concerned at the misuse of market power by mills that arises by virtue of the regional monopsonies that are a characteristic of the industry. Sugar cane is not an exchange traded commodity and is therefore priced using contracts.

The infrastructure required to transport cane to mills is expensive and interconnections between privately owned rail networks constitutes a barrier to entry and restricts competition between mills.

The Real Choice in Marketing amendments seek to introduce competition in marketing by allowing growers to access alternative options and thereby manage their risks more effectively.

The Commission has not adequately demonstrated the claim that: "*costs of the Sugar Industry (Real Choice in Marketing) Amendment Act outweigh the benefits.*"

Competition law and industry codes of conduct

There are three broad areas where the NFF believes competition regulation and oversight can be improved. These are:

- amend section 45 of the CCA to increase the utilisation of collective bargaining amongst farmers;
- the introduction of an 'effects test' in section 46 of the *Competition and Consumer Act 2010* (CCA) as recommended by the Harper Review; and
- maintain and strengthen industry codes of conduct.

The NFF believes that these changes would improve the utilisation of collective bargaining in Australia.

The NFF also supports the Harper Review's recommendation to introduce an 'effects test' into section 46 of the CCA. So-called 'effects tests' are common in other advanced economies. The concentrated retail grocery market means that Australian farmers are particularly vulnerable to misuse of market power.

The NFF believes that industry codes of conduct are valuable tools in the competition regulation landscape. They should be maintained and strengthened where it can be demonstrated that amendments improve competition.

Foreign investment in agriculture

It should be noted that there are a range of views within the broader agriculture sector and membership of the NFF on the issue of a separate foreign investment screening regime. The NFF acknowledges the benefits of foreign investment in agriculture and to the Australian economy more generally. It is for this reason that a robust and transparent screening process should be maintained. It is agreed however that the thresholds should be monitored and supported by evidence.

However, the lack of transparency in the current process is of concern.

To alleviate this lack of clarity and transparency, the NFF believes that more certainty on criteria should be provided to assist in understanding what determines the national interest test.

Further, consideration should be given to a requirement for the Treasurer to table FIRB recommendations and the Government's response in Parliament.

The FIRB should report regularly on aggregated data from the newly established foreign ownership registers of land and water, down to a local government area (LGA) or ABS statistical area 2 (SA2) level to improve transparency.

Agencies responsible for monitoring and enforcing conditions of sale imposed by the Treasurer should publish an annual compliance summary report

Export regulation

With over two thirds of Australian food and fibre exported overseas, the economic viability of farmers in Australia depends on international trade. Regulatory costs reduce the ability for business owners to invest back into the growth and profitability of farm operations.

Adoption of international standards

The Commission noted that cost recovery arrangements, certification processing times, duplication of information requirements and domestic requirements that are set higher than importing country requirements increase the cost of exporting Australian food and fibre. The NFF is of the view that these processes can be streamlined through the use of international standards that meet the expectations of both the exporting and the importing country whenever appropriate.

However, it is crucial that the adoption of international standards do not compromise Australia's strict biosecurity standards.

Single window for trade

The United Nations Centre for Trade Facilitation and Electronic Business defined a single window for trade as a place "whereby trade-related information and/or

documents need only be submitted *once* at a single entry point to fulfil all import, export, and transit-related regulatory requirements”

A single window of trade would create a single point for establishment registration, for auditing and for inspections across the supply chain.

The way forward

The NFF endorses findings of the Productivity Commission in relation to the way forward. It is important, both to address existing regulatory burden, but also to ensure that the administration of regulation into the future does not impose unnecessary burden. This is an issue that has been examined in several previous Productivity Commission inquiries.

NFF concurs with the Commission, in that the regulatory impact assessment process is often undertaken for compliance purposes or to legitimise a preferred approach, rather than being utilised to analyse the range of options available to implement the policy.

In NFF’s view, policy makers should have both incentives to better utilise the RIA process, but also disincentives to discourage poor practice.

Ensuring that the overview function is independent requires the oversight function to be situated within an independent statutory body or ensuring that the head of the oversight body be a statutory office holder direct ministerial reporting and appropriate safeguards to ensure independence and objectivity. Further independence in the oversight function would be achieved by outsourcing of the RIS process to a consultant who is independent of the relevant Department or other body.

A requirement for regulations to meet certain requirements in the RIS before progressing to cabinet or another relevant decision maker will ensure that the assessment occurs early in the regulation making process, encouraging more efficient use of resources.

Benchmarking of regulatory burden has been introduced in a number of industries to assist in preventing accumulation.

A similar approach could be considered for introduction in the agriculture industry as that taken in the food safety industry, as outlined in the 2009 Productivity Commission Report.

1.Introduction

The NFF welcomes the opportunity to make a submission-in reply to the Productivity Commission's Draft Report into the *Regulation of Australian Agriculture*. The draft report confirms much of what the NFF has been saying for some time - that Australian farmers are straining under a heavy regulatory burden, which creates significant inefficiencies across the entire supply chain.

The agriculture sector understands the need for regulation: in many cases regulation has positioned the industry very well. Strong biosecurity laws, for example, have helped to reduce risks of pest and disease outbreaks on farm while comprehensive food safety regulations have positioned Australia on a competitive footing with other export nations as producers of quality and safe food and fibre products.

While regulation can have positive effects, it cannot be ignored that more regulation is made these days than ever before. Legislation is almost the default response to the need for new public policy. In many cases it is doubtful whether Australian laws meet the test of "good regulation" in the sense that benefits to the community as a whole outweigh the costs of compliance. Clear processes and evidence-based policy should determine whether regulation is necessary, including through an economic, social and environmental lens. The default position should be 'no action' unless the evidence-base is sufficient to warrant new regulation. Transport, environment and employment regulation are each areas where reform could significantly improve our competitiveness in the global market.

Harmonisation of laws in a bid to improve consistency can also help to reduce regulatory burden but in many cases, the reverse is true. Too often, regulation is harmonised to the highest compliance cost regime, and then 'set in stone' so that it becomes almost impossible to change – regardless of the public benefit that would flow from change or the evidence to underpin it. Competing regimes need to be comprehensively considered and assessed against the cost and effectiveness of a single system, based on sound risk management principles, before a harmonised scheme is introduced

Where new regulation is introduced, greater support and consultation with farmers on the need for regulation and how it will affect farm businesses is critical if we are to facilitate effective operation of laws. This also requires more coordination within government at all levels - local, state and federal. The onus should be on government agencies to seek cooperative arrangements with other agencies and justify why additional/different information is necessary to fulfill comparable regulatory functions in relevant cases.

2.Land use regulation

Crown land and pastoral leases

DRAFT FINDING 2.1

Pastoral leases offer less security of tenure than freehold land, creating uncertainty for leaseholders and investors. In general, converting pastoral leases to freehold facilitates efficient land use.

The NFF supports the Commission's draft finding in relation to pastoral leases. Land tenure is a significant barrier to further capital investment in agriculture. Inflexible conditions of use, ever increasing annual rents and cumbersome and expensive processes to convert to freehold tenure are holding back improved productivity and diversification.

However, we note that freeholding is not always a better option for farmers. In many cases the costs of freehold conversion outweigh the benefits that can be derived due to many factors such as land capability or distance to markets. The cost of converting a perpetual lease to freehold is a major concern for farmers, and many remain satisfied with their status as leaseholders.

DRAFT RECOMMENDATION 2.1

Land management objectives should be implemented directly through land use regulation, rather than through pastoral lease conditions. State and territory governments should pursue reforms that enable the removal of restrictions on land use from pastoral leases.

The NFF supports this draft recommendation. Pastoral lease conditions can be overly onerous, or unnecessarily restrict opportunity for improvements in productivity or diversification of enterprises. Land use regulation, whether through planning instruments or workable vegetation laws are for example a better option and provide greater flexibility than strict lease conditions.

NFF supports continued state based reform to the regulatory framework for pastoral leases. Furthermore, we hold the view that the Commonwealth can play a role by providing incentives to jurisdictions to accelerate reforms that will:

- reduce the barriers to freehold conversion – including reform of the process and lower costs;
- streamline processes to change lease conditions of use.

DRAFT RECOMMENDATION 2.2

State and territory governments should:

- ensure that, where reforms to Crown lands confer additional property rights on a landholder, the landholder pays for the higher value of the land and any costs associated with the change (including administrative costs and loss of value to other parties)
- set rent payments for existing agricultural leases to reflect the market value of those leases, with appropriate transitional arrangements.

The NFF partially supports this recommendation. However, we argue that in the main, states hold limited residual value in lease tenure; lessees have been responsible for creating the real value of these leases; lessees have been scientifically proven to be good land managers. The valuation framework for changes to land tenure should acknowledge these components in addition to the change in property rights that are conferred in the conversion process.

It is important the governments transparently set rents for crown lands and pastoral leases using consistent pricing principles that recognise the unique social, economic and environmental contributions made by lessees.

Land use conflict

DRAFT FINDING 2.2

Regulation and policies aimed at preserving agricultural land per se can prevent land from being put to its highest value use.

A right of veto by agricultural landholders over resource development would arbitrarily transfer property rights from the community as a whole to individual landholders.

The NFF partially supports the Commissions views in relation to managing land use conflict. The call for policies to protect agricultural land are in effect an alternative for the strategic land use planning that takes into account longer term values for land use.

We have seen in the past short term examination of highest value uses that fail to consider the long term implications for important industries such as agriculture. We continue to see project by project assessment, rather than strategic land use planning, dominate the approach of Governments to resources sector development. The community is increasingly concerned that this approach does not adequately address the values that are important to them.

The NFF encourages the Commission to re-consider its view on the transfer of property rights from the community (the Crown) to an individual. In most cases, discussions of a “right of veto” are focused on the ability of the landholder to say yes or no in relation to fair access arrangements. This is not seeking to transfer the right to the mineral resources from the Crown to the landholder.

The call from many farmers for a “right of veto” for a development is symptomatic of two key concerns. The first is that Governments are not

adequately assessing the risks of a project, and the cumulative risks of multiple projects on the land and water resources on which agriculture relies.

The second is the imbalance that exists between farmers and resources companies in the negotiation of land access agreements, and the view that farmers are not fairly compensated for land access during exploration and development. NFF supports empowering farmers in their negotiations around access to land for mining and gas exploration. A right to say yes or no, that is reasonably exercised, will provide farmers with greater protection in these negotiations. Appropriate state-based regulatory frameworks that support this principle would provide greater balance in the negotiation process. Some jurisdictions, such as Queensland have come a long way in this regard, other jurisdictions (such as NSW) lag considerably. As onshore unconventional gas development emerges in other jurisdictions (such as the Northern Territory) steps to enshrine agreed principles and processes can provide greater certainty for both farmers and resource companies.

The importance science based decision making for resources developments cannot be understated. The Independent Expert Scientific Committee (IESC) for Coal Mining and Coal Seam gas is an important source of independent scientific advice for state and Commonwealth Regulators. For community confidence, it is essential that regulators transparently demonstrate how the IESC's advice is taken into account in decision making.

In the NFF's view, consideration should be given to the scope of the IESC's function to enable it to consider onshore gas development more broadly. Further, significant investments have been made by State and Territory Governments in the Bioregional Assessment Programme, which is developing the knowledge base to inform regulatory decisions, particularly around the cumulative impacts of developments on important natural resources such as water. With this programme coming to the end of its funding cycle, the legacy arrangements of this investment must be resolved by the Commonwealth and the States.

In the NFF's view, there is an opportunity for the Commission to be more strident in its views about the importance of fair, balanced and science based regulation to inform resources sector developments. NFF encourages the Commission to make recommendations that support greater balance and the protection of farmers' property rights in relation to land access.

INFORMATION REQUEST 2.1

What are the advantages and disadvantages of 'right to farm' legislation? Are there any other measures that could improve the resolution of conflicts between agricultural and residential land uses?

Similar to the discussion above, calls for "right to farm" laws demonstrate the frustration of the farm sector of the failings in the current approach to land use planning and other regulatory instruments that affect their ability to farm sustainably and profitably. Land use conflicts can limit the range of farming practices that can be used and neighbour pressures can limit the ability to intensify or use more efficient practices, or indeed continue with existing practices.

The calls for “right to farm” laws most often occur in areas of urban, peri-urban and lifestyle rural living encroach on productive farming areas. The poultry industry is a prime example of this. Council areas that become increasingly urbanised often lack regard for existing agricultural practices, or indeed the need to continue to drive productivity and growth to maintain profitability.

The NFF acknowledges that a single, specific “right to farm” law is difficult to frame. An alternative proposed by the Victorian Farmers’ Federation is to recognise in planning, environment protection, public health and other regulatory instruments that there may be unavoidable consequences (for example noise or odour) associated with the conduct of a lawful activity. Industry developed and adopted quality assurance or best management practice systems could be utilised to examine whether activities meet expected industry standards and if general duties to prevent nuisance have been met. This would enable genuine nuisance to be established, and provide protection to farmers against vexatious claims that are costly and stressful to resolve through civil litigation.

In the NFF’s view, local, state and commonwealth governments all have a role to play to ensure that strategic land use planning:

- Recognises the important role that the agriculture sector plays – and will continue to play - in the economies of our local communities, our states and territories and our nation.
- Ensures that food and fibre production is prioritised in land and resource planning decisions, and that planning genuinely explores the opportunity for co-use and co-existence is achievable.
- Can support growth in the agriculture sector enabling farmers to intensify, improve productivity, and change enterprises
- Ensure that any change in land use is can be compatible with agriculture by ensuring that water resources are protected, food safety and biosecurity are not compromised and that the ability of farmers to implement modern farming practices is not restricted.
-

Planning, zoning and development assessment

The Commission’s draft report highlights the challenges faced by agricultural businesses in relation to planning, zoning and development assessment.

In our submission to the issues paper, the NFF highlighted concerns with the complexity, delay and uncertainty associated with development consent. Further, we called for better scrutiny of the impacts and implications of new planning requirements, including the use of regulatory impact statements.

These issues were reflected by the Commission in the draft report, with the importance of fit for purpose and outcomes based regulation discussed. However, the Commission failed to make specific recommendations in this regard.

The NFF encourages the Commission to be more specific in its final recommendations on planning, zoning and development assessment.

3.Environmental regulations

DRAFT RECOMMENDATION 3.1

The Australian, state and territory governments, in consultation with natural resource management organisations, should ensure that native vegetation and biodiversity conservation regulations:

- are risk based (so that landholders' obligations are proportionate to the impacts of their proposed actions);
- rely on assessments at the landscape scale, not just at the individual property scale consistently consider and balance economic, social and environmental factors.

The NFF supports a risk based, landscape scale approach to environmental management, that ensures the costs and obligations faced by landholders are proportionate to the environmental impacts of their proposed actions.

The current framing of the EPBC Act is disproportionately skewed in favour of the expensive referral system. The construct of the Act means that referral is the only way to absolutely ensure compliance with the Act. The framing of the EPBC Act means that the Commonwealth cannot provide certainty that low risk farming activities (such as those that may be covered by codes or exemptions at a state level) do not require referral at the Commonwealth level.

Greater consideration must be given by the Federal Government as to how state regulatory frameworks for native vegetation management can assist to frame risk to matters of national environmental significance listed under the Federal law.

For example, if the proposed new NSW vegetation laws utilise federal definitions of listed ecological communities (EECs) in the mapping and categorisation process:

- Under the proposed code framework, clearing of EECs is permitted, with defined “set asides” (offsets).
- Codes will set out the circumstances in which certification by the Local Land Services of intended clearing is required.

However this process cannot be accredited under the one stop shop model, as it doesn't involve the same degree of “assessment and approval” and public consultation as required under the EPBC Act. Further, given the skewed low risk approach of the EPBC Act, the Federal Government is unable to certify that such actions would not be a “significant impact” on and MNES, and as such EPBC referral would still be required.

The Commission notes in its report that the full establishment of the one-stop shop model is likely to benefit farm businesses. However, significant change is required to the legal framing of the one stop shop approach in the EPBC Act to enable the Commonwealth to give effect to its intention – the removal of duplication. The NFF encourages the Commission to go further in its

recommendations to acknowledge that streamlining beyond the current model is required.

The current collaboration of jurisdictions to implement a common assessment method for listing nationally threatened species and where agreed, threatened communities, is a welcome move by the NFF. However, this approach only applies to new listings. The NFF encourages the Productivity Commission to go further in its recommendations and suggest that for listings of greatest risks and where there is demand, harmonisation of earlier listings is pursued.

DRAFT RECOMMENDATION 3.2

The Australian, state and territory governments should continue to develop market based approaches to native vegetation and biodiversity conservation. Where the community is seeking particular environmental outcomes, governments could achieve them by buying environmental services (such as native vegetation retention and management) from existing landholders.

The NFF supports this recommendation.

Market-based approaches to conservation recognise that landholder management of native the delivers significant public benefits. The current regulatory framework imposes considerable costs, opportunity costs on farmers, and fails to address the fundamental issue of equity.

The challenge with past implementation of environmental service markets, particularly at the national level, has been the perceived expense of implementation and administration.

Given the current rapid rate of adoption of digital technologies and the use of spatial information by farmers there is an opportunity for governments to refocus on alternative market structures that will better suit the future of the farm business.

Further, there is an opportunity to integrate environmental service markets and industry best management practice programs provides an efficient monitoring and reporting mechanisms for farmers to demonstrate the delivery of environmental services.

DRAFT RECOMMENDATION 3.3

The Australian, state and territory governments should review the way they engage with landholders about environmental regulations, and make necessary changes so that landholders are supported to understand the environmental regulations that affect them, and the actions required under those regulations. This would be facilitated by:

- recognising and recruiting the efforts and expertise of landholders and community based natural resource management organisations, and;
- building the capability of, and landholders' trust in, environmental regulators.

The NFF supports this recommendation.

Efforts to improve information flow and increase the amount of extension resources are congruent with NFF recommendations to improve the understanding of farmers about their regulatory responsibilities.

It is important to ensure that these engagements are appropriately targeted and are both proactive and passive.

Proactive communication efforts are required as the level of awareness and understanding of environmental laws, and particularly the EPBC Act is low among the farming community. This can mean efforts such as targeted education and communication campaigns in regions that are affected by new listings and greater cooperation between tiers of government – for example when state based regulations are changed.

Ensuring that the content of information is also suitable for farming audiences is appropriate. In the case of the EPBC Act for example there is very limited information available to:

- in plain English, and utilising high resolution spatial data to identify the existence of a listed matter of MNES at a particular location.
- assess (without the need for specialist ecologists) activities that are considered to be likely to have a significant impact, and thus may require referral
- provide guidance as to how you can demonstrate that you have exercised due diligence in considering the implications

There is also an opportunity to better utilise spatial data to provide accurate information to a farmer at the point in time that they are considering a potential action.

There should instead be a focus on ensuring that when a landholder needs to make a decision they have ready access to the information they need, collated in a format that covers the relevant regulation across different jurisdictions and is specific in nature.

Further, there should be a proactive approach to how information regarding new listings is conveyed to landholders to ensure it is given due consideration in land management planning.

4. On-farm regulation of water

Water reporting

DRAFT RECOMMENDATION 4.1

The Australian Government should implement the findings of the Interagency Working Group on Commonwealth Water Information Provision to reduce duplicative and unnecessary water management information requirements imposed on farm businesses.

The NFF supports this recommendation. Regulations relating to the provision of water information imposes regulatory burden and costs associated with the collection, collation and reporting of data by the regulated entity.

While in the main this is not farmers (but rather Government agencies and irrigation infrastructure operators) the costs of these activities are passed on to farm businesses through water charges, consistent with the national water charge rules administered by the ACCC.

A reduction in, and consolidation of, the amount and types of data required for reporting by irrigation companies would decrease the cost of business for irrigation companies, with the subsequent flow on benefit of reduced charges for farmers.

The NFF encourages the Commission to recommend that Governments undertake periodic review of information requirements, for example every 5 years. This can ensure that the collected information is useful and used, and remains relevant as operating environments and policy agendas change over time.

Regulating farm access to water

DRAFT FINDING 4.1

Complexity and ongoing changes in water regulation contribute to the cumulative burden of regulation on farm businesses. However, the diversity of Australia's river catchments makes streamlining and harmonising regulation difficult. More flexible governance arrangements may be needed to develop locally appropriate regulatory settings for accessing water.

The NFF supports the principle of subsidiarity that is espoused by the Commission in this draft finding. In relation to water policy and management, decisions should be made by the least centralised level of government possible.

The NFF's view is that pursuit of nationally streamlined or harmonised water regulations to define water access entitlements is not desirable. As the Commission notes, catchments are diverse. They are diverse in terms of hydrology, infrastructure and historical development and the evolution of regulation that govern shares, access and use. These factors combine to influence

the characteristics of the property right that is defined in relevant state water access entitlement frameworks. Recognition of this history is essential in ensure that these rights are not diminished in the process of water reform.

Water reform in Australia, particularly in the Murray Darling Basin has been a continual process since Competition Policy Reform in the early 1990s. The burden of continued water reform is to drive uncertainty in the business environment for farmers, and uncertainty in the local communities that suffer from the flow on effects of reduced production from irrigated agriculture.

The NFF notes that the Commission has explicitly excluded consideration of water planning and water markets in this inquiry. As the Commission embarks on its new role in relation to the implementation of the National Water Initiative, the NFF believes the Commission should closely examine important issues including:

- The extent to which Government policies have achieved the overarching objective of the National Water Initiative – to “optimise social, economic and environmental outcomes”
- The need for timely and transparent market information to support efficient water trading, and for the appropriate regulation of water brokers to ensure confidence in the operation of water markets
- Stability of pricing policy and water charge rules. This is necessary to avoid the costs that are associated with continued and incremental regulatory reform, costs that are passed on by water service providers to farmers
- Timely reconsideration of rules associated with the provision of water for the environment. The failure of the NSW Government to adequately review Water Sharing Plans and the role of rules based versus held environmental water are examples of this.
- The adequacy of the analysis conducted by Governments of the impacts and trade-offs associated with adjusting the total share of the resource allocated to the consumptive pool.
- The slow pace of water reform, particularly outside the Murray Darling Basin. In many areas, access rights to water are still not fully defined, undermining confidence to invest.
- The need for independent review for the provision of monopoly services, particularly by the Murray Darling Basin Authority in relation to river management functions.
- The duplication that exists in the responsibility and practice of agencies in relation to water policy, planning and environmental water management.
- The appropriateness of the analysis conducted to support the case for investment in water infrastructure, and the opportunity to provide guidance to investors on this issue.

Regulating farm use of water

The NFF supports the Commission's view that regulation of farm use of water is not a significant issue for the agriculture sector. Consistent with the statutory water access and use rights that are established in state water management laws, farm businesses should be left to make decisions about how best to use water to meet their own productivity and profitability goals.

While the Commission notes that some water used on farms is not regulated (for example stock and domestic use), in many instances regulatory processes relate to the infrastructure (eg farm dams, bores, pumps in riparian zones). As currently established, these regulatory processes place limited burden on the farm sector and are not viewed by the NFF as an issue.

However, there is potential for regulatory creep in this regard, and commentary on the need for metering of stock and domestic bores is an example of this. The NFF encourages the Commission to ensure that its recommendations reflect the need for appropriate analysis of regulatory instruments before they are made to ensure that the regulations are required (ie: they solve a real problem), appropriate and the benefits of implementation outweigh the costs.

5.Regulation of farm animal welfare

Principles of Animal Welfare

Animals play an important role in many aspects of Australian life and the Australian community has high expectations of our animal welfare system. Farmers care for their animals and are themselves strong advocates of good animal health and welfare outcomes. Healthy animals and excellence in animal care are also consistent with good farming practice, underpinning the production of high quality agricultural products. Such best practice farming is vital to the livelihood of Australian farmers.

The NFF is advocating for the respectful treatment of animals and supports the proactive implementation of welfare benchmarking across industry. The NFF also emphasises the importance of Government working collaboratively with the sector to achieve animal welfare standards that meet joint industry and community expectations.

Community expectations of good animal welfare and community perceptions of whether these expectations are met are not very well understood at present. The NFF is of the opinion that those community expectations and community perceptions need to be researched to fully comprehend how the agricultural sector can better communicate animal welfare outcomes.

Additionally, it has to be noted that community welfare beliefs do not always translate into purchasing decisions for the majority of consumers. In a 2008 usage and attitude survey commissioned by Australian Pork Limited, 63 per cent of respondents indicated that animal welfare was a low priority in their decision to purchase pork products, while only 17 per cent nominated it as a high priority. Key factors behind purchase decisions were taste, price and health benefits.

NFF RECOMMENDATION 5.1

The NFF recommends the Australian Government to undertake research into consumer perceptions of animal welfare, consumer expectations of animal welfare and consumer purchasing behaviour changes in response to animal welfare beliefs. This body of research is crucial to determine how animal welfare outcomes of production animals along the agricultural supply chain can be communicated and improved to match consumer beliefs and consumer purchasing decisions.

Regulation of Animal Welfare

DRAFT RECOMMENDATION 5.1

The Australian Government should take responsibility for ensuring that scientific principles guide the development of farm animal welfare standards. To do this, an independent body tasked with developing national standards and guidelines for farm animal welfare should be established.

The body should be responsible for determining if new standards are required and, if so, for managing the regulatory impact assessment process for the proposed standards. It should include an animal science and community ethics advisory committee to provide independent evidence on animal welfare science and research on community values.

The NFF supports the tenet that scientific principles need to guide animal welfare standards. This tenet does not, however, necessitate the introduction of an independent body tasked with developing national standards and guidelines for farm animal welfare. What is needed is a process for achieving national consistency, whereby Industry, Federal, State and Territory Governments agree on a set of science-based principles for animal welfare and corresponding standards are then adopted by States and Territories without variation.

The NFF is of the view that there is insufficient understanding of the outputs and outcomes of a national office within the animal welfare regulation space of production animals. The agriculture industry would not support another layer of bureaucracy simply to satisfy a perceived need when there is no clear and tangible agreement or understanding of what difference a national office would make in the landscape of animal welfare.

While the NFF is opposed to the introduction of a national office of animal welfare, the NFF strongly advocates for national principles for science-based animal welfare outcomes. Harmonisation will reduce compliance uncertainty and bring transparency into the currently confusing landscape of diverging animal welfare principles.

NFF RECOMMENDATION 5.2

Federal, State and Territory governments should endorse a set of national principles and standards for science-based animal welfare outcomes to ensure confidence among consumers and producers.

NFF RECOMMENDATION 5.3

The Federal Government should improve communication and education about the standards and guidelines in place to raise awareness and adoption of relevant measures. This includes initiatives to improve consumer understanding and confidence in animal welfare practices.

Industry-led quality assurance systems and transparency of monitoring

DRAFT RECOMMENDATION 5.2

State and territory governments should review their monitoring and enforcement functions for farm animal welfare and make necessary changes so that:

- there is separation between agriculture policy matters and farm animal welfare monitoring and enforcement functions
- a transparent process is in place for publicly reporting on monitoring and enforcement activities
- adequate resourcing is available to support an effective discharge of monitoring and enforcement activities.

State and territory governments should also consider recognising industry quality assurance schemes as a means of achieving compliance with farm animal welfare standards where the scheme seeks to ensure compliance (at a minimum) with standards in law, and involves independent and transparent auditing arrangements.

The NFF supports this recommendation. The NFF maintains the view that the best way to develop animal welfare principles has been and will be through cooperation of industry and government. The current animal welfare standards and guidelines that have been established in this way are now being put into legislation. The NFF suggests to let this process develop. These animal welfare standards and guidelines follow a number of principles:

- Have science-based animal welfare outcomes that are nationally consistent;
- Focus on production animals along the agricultural supply chain;
- Recognise industry-led quality assurance schemes;
- Have clear and transparent reporting of animal welfare outcomes, undertaken by independent, adequately trained and well-resourced auditors that have been trained on best practice in animal husbandry in each specific industry.

To this end, the industry has developed and implemented a number of improved animal welfare practices in the absence of an independent body of animal welfare. These improved animal welfare practices include the low stress stock handling of sheep, cattle and goats and the voluntary phasing of sow stalls by the pork industry, making the Australian pork industry a world-leader¹.

¹ Australian Pork Limited, 2016, *Housing*, viewed 9 August 2016, <<http://australianpork.com.au/industry-focus/animal-welfare/housing/>>

6.Regulation of technologies and agricultural and veterinary chemicals

Access to genetically modified organisms and products

The NFF perceives the potential of gene technology as a valuable tool within agricultural production systems and supports gene technology research and development. The outcomes of this R&D can contribute to meeting Australia's future challenges in areas such as economic growth, human health and environmental sustainability.

The NFF firmly advocates that farmers should retain the opportunity to adopt the method of production best suited to their business needs, be that GM, conventional, organic or any combination of these methods. In protecting the integrity of a farmer's decision, it is important that agricultural supply chains consider the implementation of plans to allow all producers to continue to meet the requirements of their chosen markets.

DRAFT RECOMMENDATION 6.1

The New South Wales, South Australian, Western Australian, Tasmanian and Australian Capital Territory governments should remove their moratoria (prohibitions) on genetically modified crops. All state and territory governments should also repeal the legislation that imposes or gives them powers to impose moratoria on the cultivation of genetically modified organisms by 2018.

The removal of the moratoria and repeal of the relevant legislation should be accompanied by the provision of accurate information about the risks and benefits to the Australian community from genetic modification technologies. State and territory governments, the Office of the Gene Technology Regulator and Food Standards Australia New Zealand should actively coordinate the provision of this information.

The NFF supports this recommendation. Unnecessary restriction on the use of biotechnology by Australian farmers should be removed where these technologies pose no health or environmental risk. Moratoria reduce the ability of farmers to freely make cropping decisions, they increase operating costs for farmers operating across jurisdictions and they block the transport of GM crops across jurisdictions, raising transport costs. GM crops offer opportunities for Australian farmers to diversify their enterprises and increase productivity. These opportunities should not be held back by ill-informed policy. Further, the removal of moratoria should be supported by a cross-jurisdictional consideration of GM by COAG. The introduction of a nationally consistent, scientifically grounded framework for GM regulation is required to provide consistency and confidence for industries and consumers.

The express prohibition of GM products from the National Standard for Organic and Bio-dynamic Produce is an example of where the weight of scientific evidence in relation to the safety of GM products is ignored. Zero tolerance is an impractical benchmark from which to work and only perpetuates the inability for GM crops to

begin coexisting with other production systems. The Australian Government Department of Agriculture should take the national lead in engaging the organic industry to ensure that the National Standards are grounded in good science, providing a workable level from which organic GM production may be explored.

The NFF recognises that there are community concerns about gene technology, largely due to emotions around unsafe food. For this reason, the NFF considers the Commission's recommendation to provide "accurate information about the risks and benefits to the Australian community from genetic modification technologies" crucial to the market acceptance of GM technologies. It is important in understanding the potential of gene technology that all Australians can access relevant and factual information on potential benefits and associated risks of adopting this technology.

NFF RECOMMENDATION 6.1

The NFF recommends to remove unnecessary restriction on the use of biotechnology by Australian farmers where these technologies pose no health or environmental risks.

Telecommunications infrastructure

In the submission to the Productivity Commission's *Review into the Telecommunications Universal Service Obligation*, the NFF outlined that access to a reliable telecommunications infrastructure is essential for farmers living and working outside of metropolitan Australia. Telecommunication service-access has important safety implications for people on the land. Agriculture is statistically a high risk industry with regards to work health and safety. Often, farmers work alone in areas a long way from mobile coverage, which can limit access to emergency services and lead to preventable fatalities.

Quality telecommunications are currently the basis of business activities such as online banking, weather information, trading crops and livestock, online learning, webinars and the maintenance of national livestock traceability databases. In future, telecommunications infrastructure will become even more important: New technologies, underpinned by access to communications infrastructure, have the capacity to revolutionise agriculture and to turn around flagging productivity growth.

In Australia, access to telecommunication is regulated under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cwlth). The Act states that there is a universal service obligation (USO) to ensure that fixed-line voice services are 'reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on businesses (section 9(1) (a) and (b)). For this reason, the NFF disagrees with the Commission's evaluation in the Draft Report *Regulation of Agriculture* that "the availability of telecommunications infrastructure [is not] a regulatory issue" (p. 245).

Although regulated access to telecommunications cannot be considered additional red tape that hampers the productivity of agribusinesses, its absence has serious productivity implications for farmers that live and work in an environment without

a functioning telecommunications market. Farmers live and work in a regional setting with inequitable access to telecommunications: Service is less reliable, more expensive and has a lower quality than service in urban settings. There is a clear demand and dependence on reliable, affordable and sufficient telecommunications in the bush that is not met by the current telecommunication market in regional and rural Australia in the absence of a data provision in the USO.

NFF RECOMMENDATION 6.2

The NFF recommends revision of the USO. The revised USO needs to have consumer protections that are appropriate in the current telecommunications landscape and that set minimum standards for both voice and data services. The USO needs to ensure that all Australians have access to affordable, reliable and equitable access to telecommunication services, regardless of where they live and work.

Access to agricultural and veterinary chemicals

Usage of international data in agvet chemical admission

The NFF is of the view that new agricultural chemicals and veterinary medicines (agvet chemicals) can improve the productivity and sustainability of Australian agriculture and supports reform that facilitates access to state-of-the-art chemicals.

As outlined in the Commission's report, operational improvements within the APVMA can deliver time and cost reductions. Australian farmers need a system of chemical registration that facilitates the introduction of new chemicals onto the Australian market in a timely and cost efficient manner. Australian farmers compete in international markets, and it is important that they have access to the tools which allow them to produce safe fresh produce in a cost effective manner. The costs of registration and timeframe around this process should not deter registrants from seeking to introduce new chemicals to the Australian market.

DRAFT RECOMMENDATION 6.2

The Australian Pesticides and Veterinary Medicines Authority should make greater use of international evidence in its assessments of agricultural and veterinary chemicals (including by placing greater reliance on assessments made by trusted comparable international regulators). Reforms currently underway in this area should be expedited.

The NFF welcomes this recommendation. A lack of recognition of overseas testing has been a significant disadvantage for Australian growers that have limited access to chemicals compared to farmers operating in other nations because of the higher costs associated with testing agvet chemicals for the relatively small Australian market. This recommendation will also speed up the lengthy testing process, enabling farmers to access agvet chemicals in a more timely manner by avoiding costly and unnecessary duplication of tests if they occur in directly comparable environments.

The NFF is of the view that international data should, however, be used to only inform the Australian Pesticides and Veterinary Medicines Authority's (APVMA). It is important that the APVMA maintains its power to independently decide which agvet chemicals are allowed for use in Australia. If international regulatory decisions were accepted without further testing, the admission of agvet chemicals for the Australian market would become a political decision.

National harmonisation of control of use of agvet chemicals

DRAFT RECOMMENDATION 6.3

The Australian, state and territory governments should expedite the implementation of a national control-of-use regime for agricultural and veterinary chemicals (which includes increased harmonisation of off-label use provisions), with the aim of having the regime in place in all states and territories by the end of 2018.

The NFF supports the recommendation to harmonise the control of use of agvet chemicals and agrees with the aim of having the regime in place by the end of 2018. Off-label use currently differs dramatically between different jurisdictions, putting farmers operating in states and territories that have strict off-label use regulations at a competitive disadvantage.

Access to agvet chemicals for minor uses

The NFF has for a long time advocated for a facilitation of the admission of minor-use chemicals that would otherwise be too costly to register. There is a clear need to streamline the registration and approval process of minor use agvet chemicals: there currently is a huge opportunity cost for farmers who are not able to access the most efficient, safer and sustainable agvet chemicals. The NFF acknowledges that recommendations around the funding of a minor use program was outside the scope of the Commission's inquiry.

However, the NFF considers the difficulty of farmers to access minor use agvet chemicals a burden that could be solved through regulatory reform. It is crucial though that regulation of minor use agvet chemicals as well as of off label use of agvet chemicals considers residue implications. The NFF suggest to include a recommendation into the Commission's final report on how to best address this issue. Rapid response to new, unforeseen biosecurity issues is critical for agricultural productivity and protecting trade.

NFF RECOMMENDATION 6.3

The NFF recommends the establishment of a minor use regulatory guidelines and prioritisation framework to help agricultural industries respond to new pest and disease incursions in a more timely and efficient manner.

Labelling of agvet chemicals under work health and safety regulations

The NFF reiterates its concern that new hazard labelling requirements from 2017 onwards should not apply to chemicals prescribed and approved under the *Agricultural and Veterinary Chemicals Code Act 1994*, an outcome that can readily be achieved by amending regulation 335 of the WHS Regulations. As a

matter of principle, the NFF does not support Codes of Practice and Guidance Materials for so long as their purpose is to facilitate prosecutions rather than improve safety outcomes. WHS laws must be outcomes-based. The regulatory framework for agvet chemicals is adequate in protecting the health and safety of workers.

The NFF does not regard additional risk testing with regard to worker health and safety as an improvement over the current system and is of the view that these additional requirements are expensive, unnecessary and will further slowdown the admission process of agvet chemicals.

NFF RECOMMENDATION 6.4

The NFF recommends continuation the exemption of agvet chemicals that have APVMA-approved labels in regulation 335 of the WHS Regulations.

7. Biosecurity

Australian agriculture is an economic, social and environmental powerhouse that benefits the entire country. The competitive advantage of our produce on the world market is that Australian food and fibre are high-quality, safe and trustworthy because Australia is free of many pests and diseases affecting agricultural productivity, as well as food safety, in other countries. Agriculture's competitive advantage thus depends on well-structured and thorough biosecurity.

The NFF considers that prevention, early detection, rapid response and working collaboratively across both industry and government is required to protect Australia's 'clean, green' image. Major biosecurity incidents affect not only the environment and primary producers, they have the potential to affect all of Australia (including, for example, the tourism sector, emergency services, the police), and thus require a whole of government approach. Good biosecurity needs to be outcome-focussed, not process-focussed.

The NFF is of the view that good national biosecurity system needs to be the responsibility of everyone in Australia. This requires a change in culture and a change in the current biosecurity approach. We need to shift the way we talk about biosecurity and the way we treat threats and outbreaks. Incursions are a reality in the age of globalisation; the question is not if biosecurity breaches will occur, but when. We need to make sure that reporting on biosecurity threats and incursions is easy and risk-free for the reporter in order to enable Australia's national biosecurity system to better respond to incursions.

NFF RECOMMENDATION 7.1

Australia's robust, efficient and science-based quarantine and biosecurity system must be maintained.

The IGAB Review

The NFF is looking forward to the outcome of the current Intergovernmental Agreement on Biosecurity (IGAB) review to see how regulations can be harmonised and how industry can play a bigger part within the design and implementation of biosecurity measures. At present, different rules and regulations across state borders reduce understanding and increase confusion, all of which works to reduce the effectiveness of the regulatory regime in place. Businesses need to operate in an environment of certainty and every effort needs to make sure that red tape does not hinder business efficiency, leading to frustration, and subsequent attempts to circumvent laws meant to protect biosecurity.

The current IGAB has the right principles, goals and objectives to sustain Australia's strong and reliable biosecurity system. Transparent, science-based quarantine and biosecurity measures to protect Australia's environment, biodiversity and agricultural systems need a comprehensive and national approach to achieve effective prevention, detection and control of invasive species.

There needs to be a balance between reducing the likelihood of exotic pests and diseases entering Australia and our openness towards trade, as reflected in the current wording of the IGAB (Chapter 3). Nonetheless, industry could be engaged more on priorities to better align the department's import analysis and export market access work. While the NFF recognises that exporting goods is made more difficult when Australia is slow to action a risk assessment of another country's imports, it is crucial that Australia's biosecurity is not compromised.

One of the NFF's highest priorities in biosecurity is that biosecurity should be everyone's concern. Improved awareness of biosecurity by stakeholders and the general community is vital to ensure high biosecurity compliance in our globalised world with increased travel and trade. It is critical that we encourage the identification and reporting of biosecurity risks instead of nudging people to hide suspected biosecurity problems from authorities.

NFF RECOMMENDATION 7.2

The IGAB review should ensure that government works more closely with industry to ensure biosecurity protocols and regulations are best suited to accepted industry practice.

The IGAB review should also investigate how biosecurity regimes can be harmonised nationally.

Farm trespass

INFORMATION REQUEST 7.1

Participants raise concerns about farm trespass, particularly as trespass can increase biosecurity risks. What strategies could be used to discourage farm trespass? Are existing laws for trespass sufficiently enforced in relation to farm trespass?

The NFF is aware of numerous anecdotal reports of incursions on farm by electricity, wind, water, phone and mining companies and also the increased illegal access by activists seeking to pursue a specific cause. This is a significant concern to the farming industry and must be addressed.

There should be strict and controllable measures in place to prevent any unauthorised access to farms whether by service authorities, miners or activists who illegally enter and trespass onto farms. The risks are critical from a biosecurity perspective and can undermine and compromise measures farmers have put in place to allow them to produce and sell food and fibre to global markets. Farm trespass by utility and mining companies may appear to be of a lesser scale but still raises a number of risks including:

- Spreading weeds;
- Spreading diseases;
- Disturbing stock, increasing threats such as mismothering of calves/lambs;
- Leaving gates open, allowing stock to stray (especially onto public thoroughfares) or mixing different groups with subsequent production loss.

It is critical that farmers are informed by utility and mining companies prior to them arriving on the property so that they can take appropriate measures and ensure that biosecurity protocols are followed. However, in order for this to happen, utility and mining companies need to be aware of their biosecurity obligations and of the threat they can potentially pose to commercial production systems as well as to native fauna and flora.

The NFF recommends a national approach to increase awareness about the risks associated with farm access among mining and utility companies as well as among the general public. One model that could be used to this end is the “Livestock Biosecurity Network” (LBN) that was established nationally in 2013 by Woolproducers Australia, Cattle Council of Australia and by the Sheepmeat Council of Australia. The LBN has the objective to spread information about biosecurity threats to sustainable farming and livestock health and welfare and to thus prevent and mitigate the outbreak of exotic or emerging diseases. To this end, the LBN has developed awareness and containment strategies and is currently employing Regional Officers that work in all states and territories to build networks and to disseminate information.

NFF RECOMMENDATION 7.3

The NFF recommends the establishment of a nation-wide awareness and education campaign about the biosecurity threats of farm trespassing. This awareness and education campaign should be targeted at two different groups:

- Utility and mining companies who access farms as part of their day to day legal operations.
- Any person (tourist, activists, etc.) who either unintentionally or deliberately enter properties illegally the consent of farm owners.

8. Transport

Freight and transport are integral components of ongoing agricultural production and access to efficient and reliable transport networks is a key factor in competitiveness of Australian agriculture. Overall, the NFF supports findings and recommendations in the Draft Report.

Heavy vehicle access

DRAFT FINDING 8.1

Despite the commencement of the Heavy Vehicle National Law and the establishment of the National Heavy Vehicle Regulator, there remain significant variations and inefficiencies in heavy vehicle regulation, including delays in processing road access permits.

The NFF supports this finding. The move to a single National Heavy Vehicle Regulator (NHVR) is a step in the right direction. However, there are a number of barriers, outlined in the draft report, that inhibit the efficiency and reliability of transport in Australia, impeding on agricultural competitiveness. The timeframe for permit processing does not accommodate the business needs of farmers who must have capacity to operate on short notice where required. Options for reducing the volume of permits required are strongly encouraged.

Regulatory restrictions that limit access to certain roads based on vehicle size, configuration and operating hours limit the efficiency of road transport, as does the application of different regulations in different jurisdictions. These restrictions contribute to the last and first mile access issue and make it difficult for transport companies to run most efficient vehicles across state lines.

To facilitate the current complicated Heavy Vehicle model, the NFF suggests that the Government should investigate whether it would be possible to change the road permit system to a system in which agricultural supply routes in farming areas are automatically classed as open access for heavy vehicles unless road managers give cause as to why this should not be the case. This method would have the effect of keeping the focus on road managers to ensure that roads are built for the required use for agricultural needs.

NFF RECOMMENDATION 8.1

Heavy vehicle regulations should be streamlined across all the jurisdictions in areas such as size, mass and registration costs to help transport companies to consistently use the most productive vehicles.

It is important, however, that streamlining does not lower heavy vehicle access to the lowest common denominator across jurisdictions.

DRAFT RECOMMENDATION 8.1:

States and territories that are participating in the Heavy Vehicle National Law should increase the number of routes that are gazetted for heavy vehicle access. Permits should only be required in locations where there are significant risks to public safety or infrastructure that must be managed on a case-by case basis.

There are arrangements in South Australia to allow road users to propose and undertake road route assessments for gazettal, and in Queensland to fund road assessments and gazettals on both state and local roads. These arrangements should be considered for adoption in other jurisdictions or expansion in respective states.

The NFF supports this recommendation. There are many roads that are currently not gazetted for heavy vehicle access that form major freight barriers. For example, the first and last mile issue referred to in the draft report means that part of the freight journey can occur on local road and rail networks outside of major freight corridors that aren't gazetted for heavy vehicles.

Permits add significant red tape to road use and should only be required where necessary. The NFF supports the recommendation that these only be required in locations where there are significant risks to public safety or infrastructure that must be managed on a case-by-case basis.

The NFF endorses the comments of the Productivity Commission Draft Report that 'there appears to be some scope to increase flexibility for moving oversized agricultural machines without impacting on public safety.' The regulatory burden imposed on movement of agricultural machinery should be proportionate to the safety risk.

Road-user charging

DRAFT RECOMMENDATION 8 2:

The Australian, state and territory governments should pursue road reforms to improve the efficiency of road infrastructure investment and use, particularly through the introduction of road-user charging for selected roads, the creation of Road Fund, and the hypothecation of revenues in a way that incentivises the efficient supply of roads.

In principle, the NFF supports a road user charging system. The NFF considers that current methods of road funding through a combination of registration fees and fuel-based charges are inequitable and do not reflect the actual cost of individual vehicles to use the road network. The Road Fund model and hypothecation of revenues outlined in the Commission's inquiry into public infrastructure could be considered; however, the NFF would like to see more evidence about how this would play out in practice and the effects of road user charging on rural and remote communities.

Caution must be exercised when implementing a user pays model to ensure that roads across the country are well maintained without imposing unequal costs on Australians living in rural and remote settings. Australians living in rural and

remote settings have to travel vastly longer distances to access basic services such as health care and education and the places that they do business in are further away than they would be in an urban setting.

Under the current framework, primary producers have access to reduced registration fees and fuel tax credits through the Diesel Fuel Rebate Scheme (DFRS). These measures recognise that many farm vehicles and machinery do not operate on public roads and that average farm trucks travel drastically fewer kilometres on public roads than commercially registered trucks. Before supporting a new user road user charging model, the NFF calls for further detail on what this model may look like and evidence based analysis on the impacts of the model on farmers. It must be demonstrated that the new model is more beneficial to primary producers than the current reduced registration fees and fuel excise.

Such analysis would need to take into account the following factors:

- Will the model be more expensive for primary producers?
- Will roads in rural and remote locations be better maintained under this new model?
- Will the technology required to calculate road-user charging be appropriate for primary producers?

When assessing the use of technology aided user-pays charging in a rural context, the nuances of regional transport must be considered. Whilst the use of telematics to track heavy vehicle movements is appropriate for large interstate carriers who already have the technology in place, for primary producer vehicles, constituting 15 per cent of the total national heavy vehicle fleet, this would most likely involve the retrofitting of costly technology. Technology must have capacity to work in remote settings without functioning mobile data.

NFF RECOMMENDATION 8.2

The NFF recommends thorough research and modelling of how road user charging would work in rural and remote setting before the idea of road-user charging is further progressed. At present, there is not enough information available to determine whether the potential benefits outweighs the costs. Additionally, there is a lack of information about the practical application of tracking technology and a lack of information whether this technology is appropriate for primary producers.

Agricultural supply chain modelling could be used in the cost-benefit analysis of rural and remote transport infrastructure. Similarly, increased funding for the Commonwealth Scientific and Industrial Research Organisation's (CSIRO). Transport Network Strategic Investment Tool (TRANSIT) program would assist with identification of where investment is needed to best support livestock transport.

TRANSIT calculates how pinch points and last mile access issues impact on agricultural supply chains and analyses which strategic regional projects will have the biggest impact. The Agricultural Competitiveness White Paper allocated \$1 million for TRANSIT to examine freight flows and freight costs of 25 major agricultural commodities, accounting for more than 95 per cent of Australia's agricultural transport volume. TRANSIT is key to identifying infrastructure gaps and to set the agenda for new infrastructure projects, using scientific evidence to assess all possible transport route combinations. New infrastructure needs to be constructed with the right goal in mind and at the right location. TRANSIT is designed to help all three tiers of government to plan a road transport system that meets "existing and future needs of the agriculture sector".

In light of this, the NFF makes the following additional recommendations:

NFF RECOMMENDATION 8.3

Include agricultural supply chain modelling in the cost benefit analysis of rural and remote transport infrastructure.

NFF RECOMMENDATION 8.4

Increase funding for TRANSIT to target and channel rural and regional infrastructure spending. TRANSIT should be a continuous project and should be integrated into the National Guidelines for Transport System Management in Australia.

As noted by the Productivity Commission, several changes have been made to reduce the burden imposed on transport operators by fatigue management requirements. This is a step in the right direction, however, caution must be taken

to ensure that this does not in fact increase the regulatory burden on farmers in particular states.

National Heavy Vehicle Regulator (NHVR)

DRAFT RECOMMENDATION 8.3:

The National Heavy Vehicle Regulator, road managers, and relevant third parties (such as utilities and railway companies) should ensure that requirements for moving oversized agricultural machinery are proportionate to the risks involved. To achieve this they should, wherever possible, make greater use of gazettal notices or other exemptions for oversized agricultural machinery, and issue permits for oversized agricultural machinery that are valid for longer periods and/ or for multiple journeys.

The NFF supports this recommendation. While safety is imperative, streamlining and simplifying regulation of agricultural machinery on public roads is important. Permits can be timely and costly to obtain and can hinder the flow of work on farms. Consideration of measures to overcome this such as gazettal notices and other exemptions are encouraged. Further, coordination of regulation between states will assist to reduce confusion. Current efforts to develop a *national agricultural notice gazette* would reduce the need for the number of permits currently required and provide certainty for anyone moving agricultural machinery. Resources that support the NHVR to develop the *national agricultural notice gazette* are required.

Further, the NFF supports greater delegation of authority to the NHVR by state and local governments to grant access to road networks once road managers had granted initial access for a class of vehicle. Greater delegation would assist to reduce inefficiencies and inconsistency arising through regulation of road access by a multitude of state and local government.

DRAFT RECOMMENDATION 8.5:

The National Heavy Vehicle Regulator should be provided the resources and support required to continue the development of a *national agricultural notice gazette*.

DRAFT FINDING 8.2

The road safety remuneration system (including the Road Safety Remuneration Tribunal) imposed costs on business, including farm businesses, without commensurate safety benefits and its abolition will reduce this burden.

DRAFT RECOMMENDATION 8.4:

The Australian, state and territory governments should review the National Heavy Vehicle Regulator (NHVR) as part of the planned review of the national transport regulation reforms. The review should fully assess concerns over inefficiencies in heavy vehicle regulations, and identify ways in which new funds allocated following the abolition of the Road Safety Remuneration Tribunal could best be used by the NHVR to improve safety in all states and territories.

The NFF supports this recommendation. Transport costs from farm gate to destination (both domestic and overseas) account for 21 per cent of farm gate value on average. The Road Safety Remuneration Tribunal imposed costs that were not commensurate with its safety benefits and its abolition will reduce regulatory burdens for farm businesses.

Several flaws in the process of establishing the RSR system included:

- the lack of conclusive evidence of a link between remuneration and safety
- the fact that at the time of its creation, fatality rates involving heavy vehicles were improving, so that there was no justification for such a strong regulatory response in the form of price regulation.

Regulated minimum rates would likely impose unjustified costs in the absence of clear evidence that regulatory intervention would improve road safety.

The National Heavy Vehicle Regulator is a step in the right direction but delays in processing road access permits are a significant issue. The NHVR should be reviewed to make sure it is delivering benefits to road users and farm businesses.

Funding reallocated from the RSRT to the NHVR must result in clear and demonstrable benefits to heavy vehicle driver safety, or to broader community goals including road safety or information to support efficient infrastructure investment. The NFF supports the following examples:

- Evidence-based evaluation of where state and territory regulation needs to be strengthened or streamlined to improve driver safety
- Gathering available data (eg from the Intelligent Access Program) to identify and target safety-improvement efforts at high risk areas
- Accelerating development of an incident reporting database to enable analysis of trends in heavy vehicle crashes.

The NFF agrees with the findings of the Productivity Commission in relation to the former Road Safety Remuneration system. We also agree with the need for a review of the National Heavy Vehicle Regulator to ensure it is an asset to the farm and transport sectors. The NFF supports improved data collection efforts and evidence-based gap analysis to support infrastructure investment. While the Australian Trucking Association has access to sound data on heavy vehicle incidents and trends over time, as the campaign to abolish the RSRT showed, the facts are not well understood by the broader community.

Rail

The rail grid across Australia is still largely determined by state and territory boundaries, dating pre-Federation, and has a system of multi-gauge railways. It is made up of many disconnected lines that hamper its efficient use between state and territory boundaries and between rural areas. In addition to variations in gauge standards, weight and size limits differ between some states and territories. It would be desirable to ensure that gauge sizes as well as weight and length limits of trains are harmonised to the overall benefit of Australian agriculture.

The rail grid is antiquated, further impeding on rail's competitiveness with road transport. Many local rail lines used to transport grain in Australia are in compromised physical condition, resulting in their closure.² It is crucial that the three tiers of government work together to upgrade and re-open rail lines to help Australian produce be competitive in the world market.

There are currently capacity constraints, slow rail-loading times and short sidings that make it impossible to use trains with more than a dozen wagons. Taking into consideration that rail is the cheapest mode of transport once goods are on a train, amendments to facilitate rail access could increase farm gate returns.

Upgrading existing rail lines could enable the use of higher productivity rolling stock which, in turn, would be able to decrease transport costs. Higher productivity rolling stock includes longer trains with more wagons and the ability to double-stack containers on top of each other on wagons. Additionally, upgrades of existing rail lines could also include dual gauging to enable more trains to use the rail grid across Australia.

Connecting existing rail lines to create new meaningful transport networks would make rail more attractive and accelerate freight times. By integrating underused

² White, Peter, Chris Carter, and Ross Kingwell. *The puck stops here! Canada challenges Australia's grain supply chains*. South Perth: Australian Export Grains Innovation Centre, 2015.

existing rail lines between rural towns and ports into the rail network connecting capital cities, efficient utilisation of return trips is more likely.

One of the real benefits of a nationally integrated/harmonised rail network is the flexibility and increased competition from better utilisation of rolling stock across that network. A fully connected rail network means that rolling stock providers can ‘chase’ work across multiple jurisdictions and industries and provide real competition between providers where previously this competition has been lacking. For the grower this means more dollars saved through increased competition, better quality and more efficient rolling stock and a better, more efficient and responsive level of service resulting in a far more competitive supply chain.

The NFF supports comments in the Productivity Commission draft report that call for an efficient pricing system on roads and rail to reduce distortions and to encourage transport resources to flow to their most efficient use and further calls for harmonisation of the rail system between states and territories.

Ports

DRAFT FINDING 8.3

Privatisation of major ports has the potential to increase economic efficiency, provided appropriate processes are followed to ensure that the public interest is protected through structural separation, regulation or sale conditions. Increasing the sale price of ports by conferring monopoly rights on buyers is not in the public interest.

The NFF supports this finding and considers that it should be a direct recommendation.

Most ports in Australia are privatised and regulated through a regime to constrain their monopoly power. However, not all ports are governed by effective regulation, giving some port authorities significant market power that can lead to increased transport prices. Regulators and regulatory frameworks need to consider the market power of port services chains by applying pricing oversight and, potentially, price regulation.³

When privatising assets, state governments juggle two contradicting goals: State governments want to maximise privatisation price tags while protecting Australian companies from the monopoly power arising from privatisation.

The Australian Competition and Consumer Commission (ACCC) can intervene as an access and price arbiter if monopoly powers of a declared asset under the National Access Regime (NAR) are abused.

³ Harper, Ian, Peter Anderson, Su McCluskey, and Michael O’Bryan. *Competition Policy Review – Final Report*, Canberra: Commonwealth of Australia, 2015, p 208.

Declared assets are infrastructure of national significance that have natural monopoly characteristics. Declaration criteria under Part IIIA of the Competition and Consumer Act (CCA) include:

- that access to the service promotes material increase in competition in at least one market other than the market for the service;
- that it would be uneconomical to develop another facility to provide the service;
- that the facility is of national significance; and
- that access would not be contrary to the public interest.

It is critical to the competitiveness of Australian agriculture to have easy and reasonably priced access to key infrastructure such as ports as there is no alternative to using natural monopolies.

The privatisation of infrastructure to date has taken place in an environment devoid of regulated access regimes in order to maximise sales prices, ignoring the longer cost implications for exporters including farmers.

Capacity for the ACCC to make any infrastructure of national significance exhibiting natural monopoly characteristics a declared asset must be straightforward. This will prevent the excessive use of monopoly powers by installing the ACCC as an access and price arbiter.

Coastal shipping

DRAFT RECOMMENDATION 8.5:

The Federal Government should amend coastal shipping laws by 2018 to substantially reduce barriers to entry for foreign vessels, in order to improve competition in coastal shipping services.

The NFF supports this recommendation and agrees with the findings of the Productivity Commission in relation to the need for coastal shipping reform.

Biofuel

DRAFT RECOMMENDATION 8.6:

Arrangements to support the biofuel industry – including excise arrangements and ethanol mandates – deliver negligible environmental benefits and impose unnecessary costs on farmers and the community. The Federal, New South Wales and Queensland Governments should remove these arrangements by the end of 2018.

The NFF does not support this recommendation. The NFF recognises that the establishment of a biofuels industry based on ethanol has the potential to provide the Australian community with a number of benefits including:

- Economically stable, vibrant, diversified regional communities;
- Significant improvement in air quality particularly in metropolitan areas, through the use of ethanol in petrol, with flow on environmental and health benefits;
- Substitution with a stable source of locally produced renewable fuel for imported products;
- Use of renewable feedstocks for fuel, reducing dependence on limited fossil fuels and reducing contributions to the greenhouse effect;

The NFF makes the following further recommendations:

NFF RECOMMENDATION 8.7

Grower ownership of biofuels processing facilities should be promoted.

NFF RECOMMENDATION 8.8

To support the uptake of biofuel use and reduce costs that are imposed on farmers, biofuels should be free from government taxes and fuel excise now and in the future.

NFF RECOMMENDATION 8.9

The tariff on imported ethanol should be removed while, at the same time, allowing for start up grants to assist the domestic biofuel production industry.

NFF RECOMMENDATION 8.10

The Federal Government should provide greater support for small-scale biodiesel production and consumption, through making biodiesel production licensing cheaper and its regulation more targeted to small-scale producers, such as farmer co-operatives.

9. Food regulation

Country of Origin Labelling

INFORMATION REQUEST 9.1

The Commission is seeking information on whether the new country-of-origin labelling system would deliver higher net benefits to the community as a voluntary system rather than as a mandatory system.

The NFF supports mandatory country of origin labelling (CoOL) as it goes some way to rectifying an information asymmetry which can benefit producers of food products of mixed or imported origin.

The NFF's guiding principles around CoOL labelling are that:

- labelling laws must be practical to implement;
- they must not impose unreasonable costs to businesses;
- they must not lead to adverse trade implications;
- they must provide consumers with a clear understanding of where the product comes from and where the major processes it has undergone have occurred;
- claims made must be verifiable;
- in the case of single origin produce, consumers should be able to clearly identify the product's country of origin; and
- labelling must be mandatory.

The first three principles relate to minimising the costs of the system while the last four principles ensures that consumers can have confidence in the origin of their food and so will maximise benefits to the community.

In terms of being practical to implement and minimising costs of the CoOL, the NFF supports the use of an existing classification of foods for which labelling is mandatory, as opposed to all foods or the specially designed priority/non-priority items list.

Egg stamping

INFORMATION REQUEST 9.2

The Commission is seeking information on the costs and benefits of egg stamping relative to alternative traceability systems for eggs (such as labelling on egg cartons and requiring food businesses to keep records). Are there examples where the source of an outbreak of salmonellosis caused by eggs could not have been traced in the absence of egg stamping?

The NFF endorses egg stamping as the preferred method of ensuring traceability. Food traceability is an important component of the food safety regime and the trend is towards enhanced traceability. To retreat from this would be a retrograde step.

Egg stamping has demonstrated clear benefits for consumer health and food safety and the net benefit to farmers and the community is superior to other methods suggested by the Commission.

It is a common practice for consumers to swap eggs at home between cartons to consolidate their stocks into one carton or dispose of cartons before the eggs are used. Expecting consumers to respond to an information and education and retain traceability information is unrealistic and would impose costs on them. Likewise, in the absence of stamping, for caterers and restaurants to retain traceability information would be costly and less likely to be effective.

Food safety and supplier audits

INFORMATION REQUEST 9.3

The Commission is seeking information on whether there are opportunities to further reduce the burden of regulatory food safety audits while still achieving regulatory objectives, and if so, where these opportunities lie.

The NFF agrees that the ability for government to reduce the burden of regulatory audits is limited by importing country requirements and that significant steps have been taken by State, Territory and Commonwealth authorities. The Commonwealth should seek to negotiate more flexible arrangements in trade agreements.

There is some evidence to suggest that costs and risks arising from commercial audits undertaken to satisfy retailers' ethical and other requirements are being transferred from suppliers and retailers to producers. The Commission rightly points out that this is a competition policy issue and the NFF welcomes the Commission's acknowledgement that under those circumstances, Government action may be warranted.

Despite the limitations, overarching national recognition of quality assurance schemes for Australian agribusinesses could make auditing and legal compliance easier and cheaper by streamlining existing farm auditing. This would also facilitate traceability of produce along the supply chain and simplify certification

of production regimes that promote good outcomes such as environmental sustainability and animal welfare. A first step towards overarching recognition would be a comprehensive feasibility study of current auditing requirements.

NFF RECOMMENDATION 9.1

The NFF recommends the Government undertake a comprehensive review of current quality assurance auditing requirements. The goal of the review should be to establish the feasibility of overarching recognition of existing quality assurance schemes. Greater consistency in quality assurance systems across the entire agricultural supply chain will reduce compliance and auditing costs for farmers and ensure that consumers have greater clarity around traceability and quality of produce.

10. Labour regulation

As noted in our submission to this inquiry in February 2016, migration programs provide an essential source of labour for many Australian farmers.

Seasonal Worker Program

The Seasonal Worker Program (SWP) is a migration program that has a strong aid value by facilitating work opportunities in Australia for Pacific Island nations and Timor-Leste. In contrast to the New Zealand equivalent of the SWP, demand for the program in Australia has been slow to rise, despite demonstrated labour shortages across Australian agriculture. This is due to the high regulatory burden of the program on employers as well as the high costs involved.

Labour market testing each three months makes no sense in the context of a program which seeks to address chronic labour shortages in the agriculture sector. Employers who chose the Seasonal Worker Program have chosen to move away from reliance on other workforce solutions. Testing the market means wading through streams of emails, in a scenario where very few local workers apply. The bulk of applicants are overseas workers (usually backpackers seeking to qualify for their second year visa or people wanting to come to Australia for work who are seeking sponsorship to do so). On average a full week per farm is spent going through job applications, assessing suitability and interest, and following up only to find out that the applicants have no right to work in Australia, have found other work or were never really interested in the first place.

The upfront cost to businesses to participate in the program are approximately \$2000 per worker – while much of this cost may be able to be recovered, it has a large cashflow impact (employing 100 workers requires an outlay of approximately \$200,000 before any work is done – or suitability for the work assessed). This requires a leap of faith from a price taking sector which is traditionally risk adverse and cost conscious. For Pacific Island employees, the cost of travel to Australia is significant in relative terms to their income at home.

Administration of the program is currently managed by the Department of Employment. The Department is the decision-maker and the range of decisions it must make are broad – from who can access the program, to when work is approved and how many workers are approved. In doing so, it is required to balance a broader range of public interest considerations in managing the program than would apply to a private sector provider (for example, managing risks relating to Australian government involvement in the employment of overseas workers).

In a program that seeks to address acute labour shortages during periods of intense labour demand, this can lead to withholding of critical farm labour when it is needed most. The Department is placed in the position of deciding on the farm labour needs of individual businesses, despite its lack of familiarity with those unique farming operations. Lack of familiarity generally with industry operating practices and pressures can cause delays while information is gathered, analysed and decisions made. In a similar way to the approach taken in New Zealand,

consideration should be given to transitioning the program to an industry-owned operating model to support greater efficiency and confidence in the program.

Ultimately, overcoming the range of barriers to uptake is critical if we are to grow the SWP to its full potential and the NFF recommends as follows:

NFF RECOMMENDATION 10.1

The requirement for labour market testing under the Seasonal Worker Program be abolished.

NFF RECOMMENDATION 10.2

A centrally managed fund be established for the SWP where annual employer and employee contributions are paid directly to the fund and used to cover the cost of workers travelling to and from Australia to participate in the program.

NFF RECOMMENDATION 10.3

The Government consider transitioning the SWP to an industry-owned operating model.

Superannuation for temporary residents

Key points discussed by the Productivity Commission draft report with respect to superannuation for temporary residents included:

- Paying superannuation to temporary residents does not appear to be in line with the objective of superannuation, and is an unnecessary regulatory burden
- Current superannuation arrangements for temporary workers should be considered in the backpacker tax review
- One option that has previously been recommended was increasing the minimum income threshold for superannuation, which has not increased since it was introduced in 1992, when it reflected the tax-free income threshold.

The NFF agrees that more needs to be done to ensure Australia's superannuation system is fit for the future. It is extraordinary that the income threshold has remained static for almost 25 years and the current level bears no resemblance at all to the tax-free threshold. Similarly, it makes no sense to pay superannuation to temporary residents who are unlikely to retire in Australia. The regulatory burden of administering superannuation payments remains high, particularly in rural and regional Australia where internet access is limited and data speeds are poor. Reducing this regulatory burden by removing the requirement to pay superannuation for temporary residents, who comprise 85% of the agricultural

workforce in the Northern Territory and 25% of the agricultural workforce across Australia should be a priority.

The complexity of changing the superannuation regime is often seen as a barrier to reform. On its own, complexity is not a reason to resist change where that change is clearly in the public interest.

Where there is a clear opportunity to reduce regulatory burden while aligning government programs more closely with their stated objectives, it is incumbent on government to overcome concerns about the difficulty of the task in the public interest.

457 visa training requirements

The Productivity Commission made a number of observations in relation to 457 visa training requirements as follows:

- Government should carefully examine all options for replacing the current training requirements taking into account broader costs to the community
- Setting the training benchmark at the same level as apprentice incentive payments is not necessarily a good benchmark and may not reflect broader costs on the community
- Significantly increasing employer's hiring costs is likely to deter many employers from hiring skilled migrants, and not all those deterred will hire domestic workers instead – particularly where the skills are needed immediately and for a short period

The NFF agrees with these observations. It is already very difficult for farmers to access skilled workers under the 457 visa program. Making this even more difficult will impede the future growth and productivity of the agriculture sector.

In addition to training requirements, the cost of hiring employees who are 457 visa holders can be in the range of \$6-8000. In addition, there is no medical coverage for 457 visa holders, putting them at a disadvantage while working in Australia. The Government should consider changing the Medicare eligibility rules for long-term (two years or more) temporary residents such as 457 visa holders working in Australia.

NFF RECOMMENDATION 10.4

The Government consider whether temporary residents on visas of two or more years' duration should be eligible for Medicare while working in Australia.

Calls to expand the Consolidated Sponsored Occupations List (CSOL)

The NFF has strongly advocated for the CSOL to be updated in light of many skilled agricultural occupations not included on the list, meaning that farm businesses are spending years negotiating labour agreements to access overseas workers.

The NFF supported recommendations of the Azarias review that allow new occupations to be added to the list. Dealing with semi-skilled occupations through labour agreements can only work if labour agreements are significantly streamlined.

Inability to retain good workers who come to Australia on temporary visas is a common frustration in the farming community. The NFF supports greater access to permanent visas for temporary visa holders, including through labour agreement concessions where these can be made available. Such an approach would ensure that valuable and experienced workers are not lost to the regional economies in which they are based. The pork industry labour agreement is an example of a labour agreement that permits overseas workers to a permanent visa if they meet certain conditions after a minimum period of four years. However, the four year minimum period is too restrictive as it means that workers are required to return to their home country before they are granted the permanent visa. The NFF recommends that the four year minimum period of employment requirement be amended to 3.5 years to avoid extra cost and risk involved in workers returning home during the process of negotiation for a permanent visa.

NFF RECOMMENDATION 10.5

The CSOL be capable of modification to add new occupations to the list where those occupations can be shown to exist in the Australian community.

NFF RECOMMENDATION 10.6

Labour agreement processes and timeframes continue to be improved.

NFF RECOMMENDATION 10.7

The Government continue to explore pathways to permanency for valued temporary residents in the agriculture sector.

NFF RECOMMENDATION 10.8

Where labour agreements provide for transition to permanent residency, the minimum period of employment required before transition be 3.5 years.

Labour Market Testing

As discussed in the context of the Seasonal Worker Program, labour market testing is an area of key concern to the NFF. Labour shortages are widely acknowledged in the agriculture sector – recent figures from the Department of Foreign Affairs

and Trade estimate that labour shortages cost Australian farmers \$700 million each year.

Despite this acknowledgment, no concession is made for the sector in relation to labour market testing. This needs to change to alleviate the significant regulatory burden currently shouldered by the sector in the context of labour regulation.

NFF RECOMMENDATION 10.9

The Government should abolish labour market testing in relation to the employment of agricultural workers in rural and regional Australia.

NFF RECOMMENDATION 10.10

To the extent that labour market testing requirements continue to operate, testing should only be required once every 12 months for each particular type of work in a region.

Checking migrant visas

The Productivity Commission observed that the Department of Immigration and Border Protection should continue to examine ways to improve ease and speed of access to visa checks by employers, and ensure employers clearly understand their responsibilities

The NFF supports efforts by government to make it easier for employers to check migrant visa work rights and help both employers and employees understand their responsibilities under migration and workplace law.

NFF RECOMMENDATION 10.11

The NFF encourages the Department of Immigration and the Department of Employment to jointly develop a mobile app for visa holders which contains visa information and links to information about working in Australia published by the Fair Work Ombudsman and Safe Work Australia. The app should be made available to visa holders at the time of the visa grant, before they leave their home country for Australia.

NFF RECOMMENDATION 10.12

The Government should improve internet accessibility in rural and regional Australia, including by committing to ongoing funding for the mobile blackspots program, to make it easier for employers and employees to access information and comply with their legal obligations.

Labour hire companies

Labour hire companies are important in agriculture as the seasonal nature of agricultural produce can lead to a high demand for large numbers of workers during certain, short periods of the year. Large numbers of workers in rural and regional Australia are difficult to source and labour hire companies assist to ease the burden of sourcing workers on farmers.

The NFF notes that the Commission has not made a recommendation for licensing of labour hire companies. The NFF does not support licensing of labour hire companies as we are not convinced it will lead to any change in behaviour or greater protection for workers. Those who are currently complying with their obligations will continue to do so, with increased regulatory burden. Those who are not currently complying with the law are more than likely to continue to ignore their obligations.

The NFF notes with interest the Commission's recommendations from its earlier *Business Set-up, Transfer and Closure* inquiry about tracking company directors through a Director Identity Number (DIN), with requirements for provision of additional information to help regulators pursue employers who seek to liquidate companies for the purpose of avoiding worker entitlements.

The NFF considers that this approach is worth considering. Australia has some of the strongest workplace laws in the world. We do not need more laws, but we do need better enforcement of existing laws. Improving ATO oversight of labour hire companies without adding new red tape to entire industries is likely to better meet the test of good regulation.

Other recommendations from the *Business Set-up, Transfer and Closure* inquiry have a bearing on the agriculture sector's reliance on labour hire companies. The NFF would welcome consultation with the agriculture sector in relation to those recommendations.

NFF RECOMMENDATION 10.13

The Government consult with the agriculture sector on recommendations from the *Business Set-up, Transfer and Closure* inquiry, including whether Director Identification Numbers would help improve compliance with Australian workplace and migration laws.

Workplace relations

The Draft Report refers to the recent Commission's Workplace Relations Framework inquiry. The NFF supports the majority of recommendations made by the Productivity Commission in that review.

Labour regulation is a key impediment to competitiveness and productivity in the agriculture sector. We encourage the Government to implement the range of recommendations for reform without delay, including in relation to the modern awards objective and an end to the modern award review.

The NFF strongly supports the Commission's recommendation to revise the modern awards objective to ensure that modern awards and the National Employment Standards provide a minimum safety net of terms and conditions, which promote the overall wellbeing of the community, taking into account:

- a) The needs of the employed; and
- b) The need to increase employment; and
- c) The needs of employers; and
- d) The needs of consumers; and
- e) The need to ensure modern awards are easy to understand.

In relation to the suggestion that greater use of quantitative and qualitative data analysis be used when setting penalty rates in the Pastoral and Horticultural Awards, the NFF supports consultation with the agriculture sector on how such an approach could be applied to improve farm gate competitiveness.

NFF RECOMMENDATION 10.14

The modern awards objective be amended as recommended by the Productivity Commission *Workplace Relations Framework Inquiry*.

Work, health and safety

The NFF supports reform of Work, Health and Safety laws which are complex, onerous and very difficult to change. WHS laws should be outcomes-based, with the broader objective of seeking to improve safety outcomes in the workplace. Business bears the weight of compliance with WHS laws, but is very poorly represented on the overarching body (Safe Work Australia has 15 members, of which only 2 are from the business community). The primary outcomes sought to be achieved by current WHS laws are higher prosecution success rates and penalties set at a level that would send many businesses to the wall. There is scant evidence that the model laws have improved safety outcomes.

We need a more pragmatic, targeted approach which looks to support farm and other small businesses in making their workplaces safer. Fear of heavy-handed prosecution is a major deterrent to engaging with the safety regime, which is seen as virtually impossible to comply with. Penalties must be proportionate to the offence and in line with comparable laws (such as the *Fair Work Act 2009*).

The NFF supports improved business engagement with the safety regime and more user-friendly information dissemination for employers so that they do not feel compelled to pay for advice on complying with WHS laws.

Based on comments in the Draft Report, the NFF makes the following recommendation:

NFF RECOMMENDATION 10.15

The 2017 review of WHS laws reduce the compliance burden on businesses and reduce disproportionately high penalties for breaches in each case.

11. Competition regulation

Rice marketing arrangements

DRAFT RECOMMENDATION 11.1

The New South Wales Government should repeal the *Rice Marketing Act 1983*.

The NFF does not support draft recommendation 11.1 as the case for repeal has not been adequately established.

There are two grounds for opposition to the recommendation. The first is a matter of process. Unlike the *Marketing of Potatoes Act 1946* (WA), the Commission did not directly canvass the inclusion of the *Rice Marketing Act 1983* (NSW) in the issues paper. The rice marketing arrangements in NSW are currently under review by the Department of Primary Industries and this process should be respected.

The second ground for opposition relates to the Commission's evaluation of the evidence for and against the vesting arrangements and the Sole and Exclusive Export Licence (SEEL). The Commission states that: "...the evidence presented to the 2012 review on price premiums was inconclusive." [Draft report p.414].

This contrasts with the actual findings of the 2012 review undertaken by the New South Wales Department of Trade and Investment. The NSW DTI stated: "While conflicting arguments were presented to the review, there is evidence to support a finding that the single desk enabled by vesting is delivering price premiums in export markets relative to SunRice competitors selling into those markets." [NSW Dept of Trade and Investment, 2012, p.14]

One submission to the 2012 NSW DTI review found that, based on global averages, weighted average inflation adjusted returns for Californian rice growers (under competitive arrangements) were higher than for Australian rice growers. This is the basis of the Commission's updated analysis in Appendix D. However, the 2012 NSW DTI review also noted that the methodology employed in that analysis was flawed. The reasons were:

- a reliance on global rather than individual country averages, meaning that the destination profile of exports could skew the analysis;
- the analysis necessarily relies on crude estimates of costs in the value and distribution chain;
- returns to Californian growers were skewed upwards due to the high proportion of Californian rice sold into the higher priced US domestic market.

The Commission has sought to address these concerns by estimating price premiums for 25 countries in the Middle East and North Africa (MENA) and New Zealand. There is strong evidence from the Commission's own analysis that a price premium exists for Australian rice exported to New Zealand.

The MENA analysis only partially addresses the concerns raised above. The regional estimates would still be subject to compositional effects related to the destination profile. Also, the estimates of costs in the value and distribution are, if anything, more crude. It appears that the Commission's analysis does not address the issue of Californian rice being supplied into the higher priced domestic US market.

The Commission's results are also different from analysis undertaken by Grant Thornton on behalf of the Rice Marketing Board of New South Wales. That analysis revealed that in 2014-15 an export price premium of \$82.4 million, or \$99.41 per tonne arose directly out of vesting arrangements, as well as a freight-scale advantage of around \$17 per tonne.⁴

Further, there are other benefits that single desk arrangements create that are mentioned in the 2012 DTI review.

The NFF believes that the Commission's recommendation 11.1 is at odds with the conclusions of other reviews conducted over many years into vesting arrangements and the SEEL. Further, the NFF believes that the NSW DPI review currently underway is the appropriate forum to determine the future of vesting arrangements and the SEEL.

NFF RECOMMENDATION 11.1

The NSW DPI review is the appropriate forum to determine the future of arrangements under the *Rice Marketing Act 1983*.

Therefore, the Commission should delete Draft Recommendation 11.1 from the final report.

Sugar marketing arrangements

DRAFT RECOMMENDATION 11.2

The Queensland Government should repeal the amendments made by the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*.

The NFF does not support draft recommendation 11.2 as the NFF believes that the Commission has not accurately represented the nature of the amendments made by the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*.

Cane growers are concerned at the misuse of market power by mills that arises by virtue of the regional monopsonies that are a characteristic of the industry. Sugar cane is not an exchange traded commodity and is therefore priced using contracts.

The infrastructure required to transport cane to mills is expensive and interconnections between privately owned rail networks constitutes a barrier to entry and restricts competition between mills.

⁴ Clubb,R., *Rice Marketing Board presentation to Rice Growers Association conference*, 5 August 2016.

The Real Choice in Marketing amendments seek to introduce competition in marketing by allowing growers to access alternative options and thereby manage their risks more effectively. Sugar mills have, for example, in some cases, restricted the use of forward contracts through exclusive agreements with their preferred providers. This is despite alternative options being available through other providers of marketing and pricing services. Without the protections afforded by the Real Choice in Marketing amendments, the mills are able to offer these cane supply agreements on a ‘take it or leave it’ basis.

The Commission’s states that “[c]urrent proposals by sugar millers to seek higher premiums for growers through alternative marketing options are consistent with the goals of deregulation and competition policy generally.” This is not supported with any evidence, and indeed the conduct of sugar millers seems at odds with this statement.

The Commission has not adequately demonstrated the claim that: “costs of the Sugar Industry (Real Choice in Marketing) Amendment Act outweigh the benefits.” Therefore the NFF recommends that the Commission’s draft recommendation 11.2 should be deleted from the final report.

NFF RECOMMENDATION 11.2

The NFF believes that the Commission has not accurately characterised the amendments made by the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*.

Therefore, the Commission should delete Draft Recommendation 11.2 from the final report.

Competition law and industry codes of conduct

DRAFT FINDING 11.2

Existing competition regulation and oversight is adequate for managing the risk of supermarkets abusing market power in their dealings with farm businesses and wholesale merchants.

Suggestions to amend exemptions that allow collective bargaining under section 45 of the *Competition and Consumer Act 2010* (Cwlth) are unlikely to increase collective bargaining by farm businesses.

The NFF disagrees with the Commission’s draft finding 11.2. There are three broad areas where the NFF believes competition regulation and oversight can be improved. These are:

- amend section 45 of the CCA to increase the utilisation of collective bargaining amongst farmers;
- the introduction of an ‘effects test’ in section 46 of the *Competition and Consumer Act 2010* (CCA) as recommended by the Harper Review; and
- maintain and strengthen industry codes of conduct.

The Commission appears to have given inadequate consideration to NFF suggestions to amend section 45. Specifically, these include:

- reversing the onus of proof for small primary producers to engage in collective bargaining by replacing the ‘public benefit’ test with a ‘public detriment’ test. This would remove the requirement for producers that collective bargaining would be of public benefit and place the onus on the regulator to prove public detriment;
- increasing and indexing the annual transaction threshold for engaging in collective bargaining above \$5 million;
- allowing interim boycotts; and
- enabling industry bodies to initiate collective bargaining applications on behalf of members.

The NFF believes that these changes would improve the utilisation of collective bargaining in Australia.

The NFF also supports the Harper Review’s recommendation to introduce an ‘effects test’ into section 46 of the CCA. So-called ‘effects tests’ are common in other advanced economies. The concentrated retail grocery market means that Australian farmers are particularly vulnerable to misuse of market power.

The NFF believes that industry codes of conduct are valuable tools in the competition regulation landscape. They should be maintained and strengthened where it can be demonstrated that amendments improve competition.

NFF RECOMMENDATION 11.2

The NFF believes there is considerable scope to improve competition regulation and oversight and improve utilisation of collective bargaining amongst agricultural producers, which is low by international standards.

The Commission should consider more closely the following recommendations made by the NFF in response the issues paper:

- amend section 45 of the CCA to increase the utilisation of collective bargaining amongst farmers;
- introduce an ‘effects test’ in section 46 of the Competition and Consumer Act 2010 (CCA) as recommended by the Harper Review; and
- maintain and strengthen industry codes of conduct.

12. Foreign investment in agriculture

DRAFT RECOMMENDATION 12.1

The Australian Government should increase the screening thresholds for examination of foreign investments in agricultural land and agribusinesses by the Foreign Investment Review Board to \$252 million (indexed annually and not cumulative).

It should be noted that there are a range of views within the broader agriculture sector and membership of the NFF on the issue of a separate foreign investment screening regime. The NFF acknowledges the benefits of foreign investment in agriculture and to the Australian economy more generally. It is for this reason that a robust and transparent screening process should be maintained. It is agreed however that the thresholds should be monitored and supported by evidence. Consideration needs to be given to whether potential foreign investors are being dissuaded by the sector-specific thresholds.

However, the lack of transparency in the current process is of concern. The Foreign Investment Review Board (FIRB) does not make decisions, but rather makes recommendations to the Treasurer, who then makes the final determination as to whether a transaction can take place. FIRB recommendations are given directly to the Treasurer.

To alleviate this lack of clarity and transparency, the NFF believes that more certainty on criteria should be provided to assist in understanding what determines the national interest test. The NFF supports the need for the Treasurer and government to retain a degree of discretion, however, greater discretion comes at the cost of increased risk for foreign investors and the risks need to be more robustly assessed. The only exception to this should be sensitive information related to national security.

Further, consideration should be given to a requirement for the Treasurer to table FIRB recommendations and the Government's response in Parliament.

The FIRB should report regularly on aggregated data from the newly established foreign ownership registers of land and water, down to a local government area (LGA) or ABS statistical area 2 (SA2) level to improve transparency.

Agencies responsible for monitoring and enforcing conditions of sale imposed by the Treasurer should publish an annual compliance summary report (For example, ACCC, ASIC, ATO) to ensure maximum transparency and build confidence in the community that any ongoing conditions of sale are being met. This should be subject to privacy and commercial in confidence limitations.

NFF RECOMMENDATION 12.1

The Foreign Investment Review Board should:

- set well-defined, objective National Interest Criteria;
- report against each criterion (with the exception of national security criteria); and
- regularly report on the contents of the National Ownership Registers of Land and Water

NFF RECOMENDATION 12.2

The Treasurer should consider:

- tabling all non-national security related FIRB recommendations in Parliament; and
- tabling a response to FIRB recommendations in Parliament as soon as practicable.

NFF RECOMMENDATION 12.3

Agencies involved in monitoring and enforcing compliance (such as the ACCC, ASIC and the ATO) should report annually on whether conditions of sale are being met on an ongoing basis. The reports should present aggregated data at the LGA or SA2 level.

DRAFT RECOMMENDATION 12.2

The Australian Government should set application fees for foreign investment proposals at the level that recovers the costs incurred by the Foreign Investment Review Board in reviewing proposals, and should closely monitor the fees to ensure no over- or under-recovery of costs.

The NFF supports this recommendation.

13. Export regulation

Australia's agriculture is well placed to diversify exports and to grow new markets: Australia's geographical proximity to Asian markets and the comparative advantage of Australian produce paint a bright future for Australian food and fibre. However, as noted in the Commission's draft report, Australian agricultural producers are price takers in the global market. Consequently, export regulations that impose unnecessary export charges on produce directly impact on the competitiveness of Australian food and fibre.

With over two thirds of Australian food and fibre exported overseas, the economic viability of farmers in Australia depends on international trade. Regulatory costs reduce the ability for business owners to invest back into the growth and profitability of farm operations.

Adoption of international standards

The Commission noted that cost recovery arrangements, certification processing times, duplication of information requirements and domestic requirements that are set higher than importing country requirements increase the cost of exporting Australian food and fibre. The NFF is of the view that these processes can be streamlined through the use of international standards that meet the expectations of both the exporting and the importing country whenever appropriate. Such standards have been developed by intergovernmental organisations such as International Chamber of Commerce and the World Customs Organisation (WCO).

However, it is crucial that the adoption of international standards do not compromise Australia's strict biosecurity standards. Australia is free of many pests and diseases plaguing agriculture in other parts of the world and this relative pest and disease free status is a competitive advantage for Australian produce on the world market.

NFF RECOMMENDATION 13.1

The Government should investigate whether international standards to consolidate import and export requirements can be adopted without compromising Australia's strong biosecurity regime.

Single window for trade

Currently, the Department of Agriculture and Water Resources (DAWR) is reviewing export certification and regulation. The NFF is an advocate for a single window for trade to reduce complexity for businesses intending to export goods and to improve the efficient exchange of information between government and exporters.

The United Nations Centre for Trade Facilitation and Electronic Business defined a single window for trade as a place "whereby trade-related information and/or documents need only be submitted *once* at a single entry point to fulfil all import,

export, and transit-related regulatory requirements”⁵. A single window of trade would create a single point for establishment registration, for auditing and for inspections across the supply chain.

Many countries already have a single window for trade including the US, New Zealand, Mexico, Singapore and South Korea. Implementing such a facility could serve to improve trade facilitation by simplifying procedures and formalities for document submission and data collection saving government and business time and money.

NFF RECOMMENDATION 13.2

The Government should undertake further work to progress implementation of an appropriate system that would provide a single window for trade in Australia to allow parties involved in trade to lodge standardised documents at a single point to fulfil all import, export and transit-related regulatory requirements.

⁵ The United Nations Centre for Trade Facilitation and Electronic Business. *Recommendation and Guidelines on establishing a Single Window*. 2005.
www.unece.org/cefact/recommendations/rec33/rec33_trd352e.pdf (accessed August 15, 2016).

14. The way forward

The NFF endorses findings of the Productivity Commission in relation to the way forward. It is important, both to address existing regulatory burden, but also to ensure that the administration of regulation into the future does not impose unnecessary burden. This is an issue that has been examined in several previous Productivity Commission inquiries.

In NFF's view, the regulatory impact assessment (RIA) process should:

- Take into consideration the market and seasonal demands on agricultural operations.
- Take into account the activities of other tiers of government and consider whether harmonisation is desirable.
- Involve consultation with regulated parties.
- Required inter-jurisdictional and inter-agency coordination.
- Encourage better data and information sharing among regulators.
- Examine the incremental and cumulative impact of regulatory demands on the sector.
- Be risk-based to ensure that regulatory response is proportionate to risk.
- Draw on a scientific evidence base, and ensure that this evidence base is effectively communicated to enhance community awareness.
- Ensure the social and economic trade-offs and implications are fully explored when making decisions based on scientific assessment.
- Ensure that the policy response is not based on 'perceptions' of risk. In some instances, public education may be necessary.

The NFF strongly agrees with the Productivity Commission that adherence to good regulatory impact assessment is essential to limiting unreasonable regulatory creep into the future.

INFORMATION REQUEST 14.1

The Commission is seeking feedback on possible strategies and governance arrangements for improving the incentives for policy makers to use regulatory impact assessment processes as an *analytical tool to support the quality of regulation making, rather than as a legitimising tool or compliance exercise*.

NFF concurs with the Commission, in that the regulatory impact assessment process is often undertaken for compliance purposes or to legitimise a preferred approach, rather than being utilised to analyse the range of options available to implement the policy.

In NFF's view, policy makers should have both incentives to better utilise the RIA process, but also disincentives to discourage poor practice.

The mix of incentives and disincentives could include:

- Two stage Regulatory Impact Statement (RIS) consultation process – an initial RIS and a final RIS.

- Ensure that the overview function is independent.
- All regulations, including subordinate instruments should be compulsorily subject to a regulatory impact assessment process, with a RIS required.
- Alternatively, a Post-Implementation Review should be required
- Failure to meet certain requirements will be grounds for preventing regulatory proposals from proceeding for consideration by Cabinet or other relevant decision maker, except in specially defined circumstances in which a post implementation review will be required.
- RIA guidelines should be legislated.
- Independent review of the accumulation of regulation on farm businesses every 5 years.
- Periodic auditing of the RIA process by an independent body such as the audit office
- RIS to be published at the time of the announcement of the regulatory decision, including the reasons why the RIS was assessed with a particular result.
- Benchmarking of regulatory burden against an industry best practice standard.

Ensuring that the overview function is independent requires the oversight function to be situated within an independent statutory body or ensuring that the head of the oversight body be a statutory office holder direct ministerial reporting and appropriate safeguards to ensure independence and objectivity. Further independence in the oversight function would be achieved by outsourcing of the RIS process to a consultant who is independent of the relevant Department or other body.

A requirement for regulations to meet certain requirements in the RIS before progressing to cabinet or another relevant decision maker will ensure that the assessment occurs early in the regulation making process, encouraging more efficient use of resources.

Benchmarking of regulatory burden has been introduced in a number of industries to assist in preventing accumulation. An example is benchmarking in the food safety industry where regulatory burden associated with food safety regulatory regimes was studied across all jurisdictions in Australia and New Zealand to develop a benchmark standard.⁶ The inclusion of New Zealand in the study provided a basis for comparison of regulation of activities where there is no existing benchmark.

Benchmarking has been cited as having the following benefits:

⁶ Productivity Commission, 2009, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*. <<http://www.pc.gov.au/inquiries/completed/regulation-benchmarking-food-safety/report/food-safety-report.pdf>>

- Improve the efficiency and effectiveness of regulation⁷
- Ensure consistency of regulation across jurisdictions⁸
- Improve the transparency of decision making and accountability of regulators⁹
- Ensure regulation delivers net benefits¹⁰
- Assist to identify jurisdictions that have been successful at reducing burden.¹¹
- Identify unnecessary regulatory burden through the comparison of the costs imposed by different regulations and regulatory approaches aimed at achieving the same outcomes.¹²

A similar approach could be considered for introduction in the agriculture industry as that taken in the food safety industry, as outlined in the 2009 Productivity Commission Report.¹³

The NFF makes the following recommendations for improving oversight of regulation making:

⁷ Australian Bankers' Association, 2008, submission to Productivity Commission benchmarking study cited in *ibid*.

⁸ *Ibid*.

⁹ *Ibid*.

¹⁰ *Ibid*.

¹¹ Productivity Commission, 2009, *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*. <<http://www.pc.gov.au/inquiries/completed/regulation-benchmarking-food-safety/report/food-safety-report.pdf>>

¹² *Ibid*.

¹³ *Ibid*.

NFF RECOMMENDATION 14.1

The following incentives and disincentives could be considered for the Regulatory Impact Assessment process:

- Two stage Regulatory Impact Statement consultation process – an initial RIS and a final RIS.
- Ensure that the overview function is independent.
- All regulations, including subordinate instruments should be compulsorily subject to a Regulatory Impact Assessment process, with a Regulatory Impact Statement required.
- Alternatively, a Post-Implementation Review should be required
- Failure to meet certain requirements will be grounds for preventing regulatory proposals from proceeding for consideration by Cabinet or other relevant decision maker, except in specially defined circumstances in which a post implementation review will be required.
- Regulatory Impact Assessment guidelines should be legislated.
- Independent review of the accumulation of regulation on farm businesses every 5 years.
- Periodic auditing of the Regulatory Impact Assessment process by an independent body such as the audit office
- Regulatory Impact Statements to be published at the time of the announcement of the regulatory decision, including the reasons why the RIS was assessed with a particular result.
- Benchmarking of regulatory burden against an industry best practice standard.