



Australian Government  
Productivity Commission

# Regulation of Australian Agriculture

## Productivity Commission Draft Report *Overview*

July 2016

This is a draft report prepared for further public consultation and input. The Commission will finalise its report after these processes have taken place.



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### **Publications enquiries**

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### **The Productivity Commission**

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

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

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

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# Opportunity for further comment

You are invited to examine this draft and comment on it by written submission to the Productivity Commission, preferably in electronic format, by **Thursday 18 August 2016**. Further information on how to provide a submission is included on the inquiry website <http://www.pc.gov.au/inquiries/current/agriculture>.

The final report will be prepared after further submissions have been received and public hearings have been held, and will be forwarded to the Australian Government in November 2015. Under the *Productivity Commission Act 1998* (Cwlth), the Government is required to table the report in each House of the Parliament within 25 sitting days of receipt.

## Public hearing dates and venues

<i>Location</i>	<i>Date</i>	<i>Venue</i>
Perth, WA	16 August 2016	Mantra on Murray 305 Murray Street, Perth
Melbourne, Vic	17 August 2016	Productivity Commission Level 12, 530 Collins St, Melbourne
Wagga Wagga, NSW	18 August 2016	Mercure Wagga Wagga 1 Morgan St, Wagga Wagga
Sydney, NSW	19 August 2016	Adina Apartment Hotel 359 Crown St, Surry Hills
Canberra, ACT	22 August 2016	Productivity Commission Level 2, 15 Moore St, Canberra
Toowoomba, Qld	23 August 2016	Burke & Wills Hotel 554 Ruthven Street, Toowoomba
Brisbane, Qld	24 August 2016	Rendezvous Hotel Brisbane on George 103 George Street, Brisbane
Townsville, Qld	25 August 2016	Rydges Southbank Townsville 23 Palmer St, Townsville

## Commissioners

For the purposes of this inquiry and draft report, in accordance with section 40 of the *Productivity Commission Act 1998* (Cwlth) the powers of the Productivity Commission have been exercised by:

Paul Lindwall

Presiding Commissioner

Ken Baxter

Commissioner

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# Terms of reference

## **Inquiry into regulation of Australian agricultural sector**

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

## **Background**

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

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

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

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

## **Scope of the inquiry**

The inquiry will focus on regulation with a material impact on domestic and international competitiveness of farm businesses and the productivity of Australian agriculture.

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The inquiry will define priority areas for removing or reducing unnecessary regulatory burdens where doing so will/can contribute to improved productivity for farm businesses as well as the wider economy.

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

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

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

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

### Specific requirements

In undertaking the inquiry, the Commission should:

- identify specific areas of regulation that are unnecessarily burdensome, complex or redundant
- identify priority areas for regulatory reform
- provide recommendations to alleviate regulatory burden identified.
- For the purposes of this inquiry, the regulatory issues affecting:
  - marine fisheries and aquaculture industries will be investigated as part of a separate Productivity Commission inquiry into the Regulation of Australian Marine Fisheries and Aquaculture Sectors.

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## **Process**

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

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

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

S. MORRISON

Treasurer

[Received 20 November 2015]

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**The full draft report is available at [www.pc.gov.au](http://www.pc.gov.au)**





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# OVERVIEW

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## Key points

- Farm businesses are subject to a vast and complex array of regulations. Regulations are in place at every stage of the supply chain — from land acquisition to marketing — and are applied by all levels of government. The number and complexity of regulations affecting farm businesses means that the cumulative burden of regulation on farmers is substantial.
- The need for regulation is not disputed by farm businesses. In fact, some regulations, such as biosecurity and food safety regulations, were highlighted as providing clear benefits to Australian farmers. Rather, Australian farmers want ‘better’ (or less burdensome) regulation.
- Some regulations lack a sound policy justification and should be removed. Examples include restrictions on the use of land held under pastoral lease arrangements, state bans on cultivating genetically modified crops, recent changes to tighten foreign investment review requirements for the agricultural sector, barriers to entry for foreign shipping providers, mandatory labelling of genetically modified foods, and statutory marketing legislation relating to rice in New South Wales and sugar in Queensland.
- Other regulations and regulatory systems need to be reformed so they can more fully achieve their objectives.
  - Native vegetation and biodiversity conservation regulations need fundamental change so that risks and impacts are considered at a relevant landscape-wide scale. Environmental regulatory decisions also need to take into account economic and social factors.
  - Animal welfare regulations seek to achieve welfare outcomes that (among other things) meet community expectations. However, little is known about these expectations.
  - The process for setting standards for farm animal welfare would be improved by applying scientific principles and evidence through the creation of a national, independent body responsible for building the evidence base on community expectations, as well as for developing national farm animal welfare standards.
  - The standard for the level of gluten allowed in foods labelled as ‘gluten-free’ needs review.
  - International evidence could be put to greater use in assessing agricultural and veterinary (agvet) chemicals, reducing the time and cost taken to grant registration.
- Inconsistent regulatory requirements across jurisdictions make it difficult for farmers to understand their obligations and add to the cost of doing business. A more consistent approach would improve outcomes in the areas of heavy vehicle regulation and road access, and the use of agvet chemicals.
- Governments could also reduce the regulatory burden on farm businesses by:
  - improving their consultation and engagement practices. There is scope to better support landholders to understand environmental regulations, and to reduce duplicative and unnecessary information gathering regarding water management by farm businesses
  - doing more to coordinate their actions, both between agencies and between governments
  - ensuring that good regulatory impact assessment processes are used as an analytical tool to support quality regulation making, not as a legitimising tool or compliance exercise.

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# Overview

The key task for this inquiry is to identify regulations that impose an unnecessary (and therefore avoidable) burden on farm businesses. And, where there are legitimate policy goals underlying the regulation, to look at whether there is scope to achieve the regulatory objectives in a more efficient way.

## Why regulatory burden matters

Regulatory burden matters because it can weigh heavily on farm businesses and undermine the agricultural sector's productivity and competitiveness. Reducing regulatory burden, and improving the efficiency of the regulatory environment, is important for all sectors of the economy, but particularly for the agricultural sector given:

- its high dependence on international markets — around two-thirds of Australia's agricultural output is exported (with most producers being price takers in international markets)
- most Australian farms are small businesses, and regulatory burdens can have a significant and disproportionate impact on small businesses.

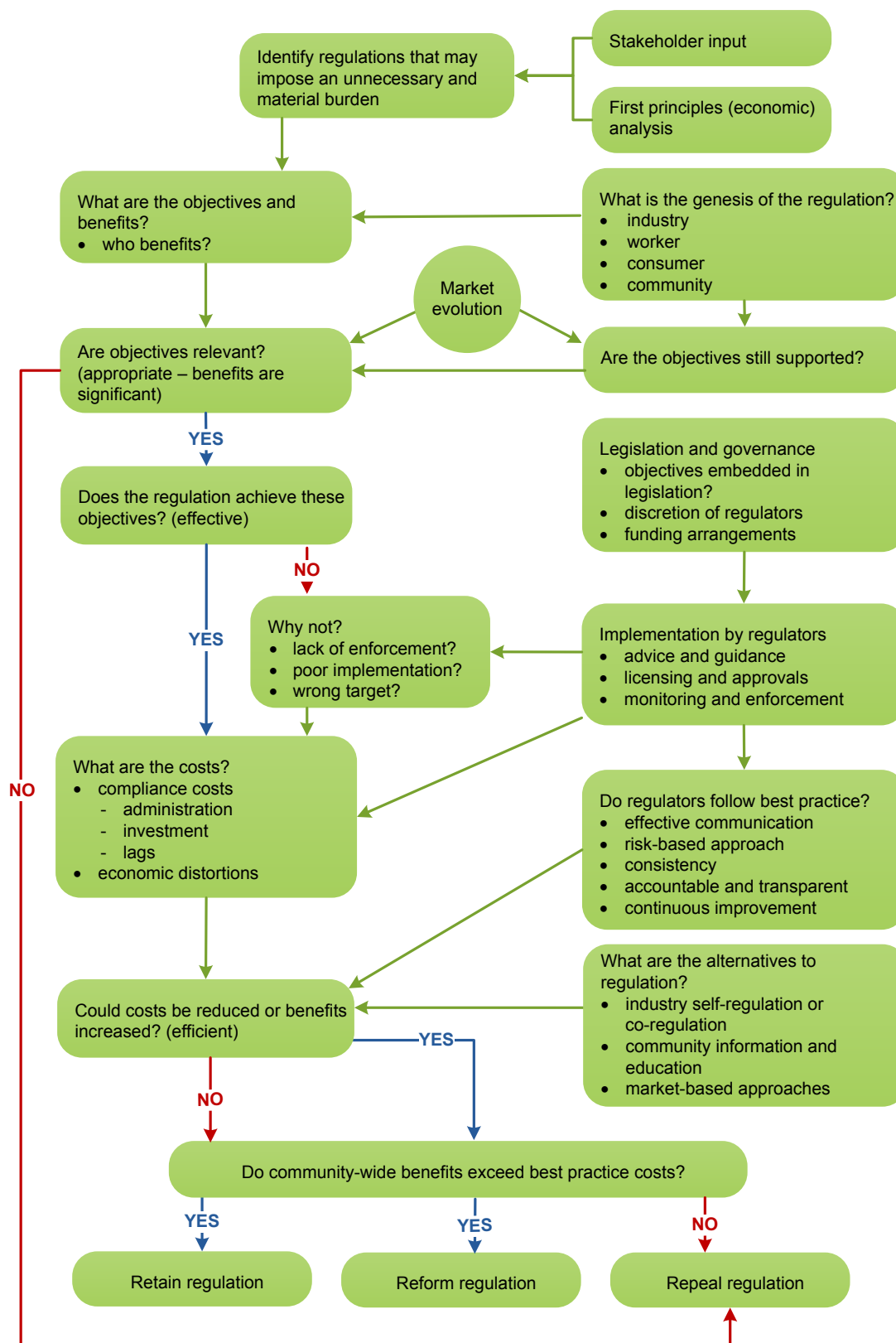
For farm businesses, reducing regulatory burden means less time spent dealing with regulation and more time spent on productivity-enhancing activities. For the community, less regulatory burden can mean lower prices (because farmers face lower costs), fewer taxpayer dollars spent on regulation and improved living standards.

## 1 Our approach to reviewing regulation

To identify regulations that impose unnecessary regulatory burdens on the agriculture sector, we asked four questions (figure 1).

- What are the objectives of the regulation?
- Are the objectives of the regulation clear and relevant (that is, do the objectives address an economic, social or environmental problem)?
- Does the regulation achieve these objectives (is it effective)?
- Could the costs of the regulation be reduced or the benefits increased (is there a more efficient way to achieve the same objective)?

Figure 1 A framework for reviewing existing regulation



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For the purpose of this inquiry, ‘regulation’ is defined as any laws or other government rules (such as standards and codes of conduct) that influence or control the way people and businesses behave.<sup>1</sup>

The focus of the inquiry is on unnecessary regulations that have a *material impact* on the domestic and international competitiveness of farm businesses and on the productivity of Australian agriculture. However, when examining regulations (and their materiality), regulations are assessed against providing a net benefit to the Australian community, not just to the agricultural sector.

With only limited quantitative evidence on the costs of regulations, materiality is based on judgments about the potential gains to the Australian community from removing or amending regulations. Other factors taken into account include the number of businesses and consumers affected (directly and indirectly) and whether the regulation spans multiple jurisdictions or agricultural industries.

## **There are regulations at every stage of the supply chain**

At each stage of the agricultural supply chain there are regulations in place, including for land acquisition and preparation, capital and labour use, transport of inputs and outputs, marketing and product sales (table 1).





All levels of government impose regulations that affect the agricultural sector.

- The Australian Government is mainly involved in regulating national and interjurisdictional issues, including biosecurity and access to agricultural and veterinary (agvet) chemicals. The Department of Agriculture and Water Resources is responsible for around 90 non-fisheries related Acts. This is a small proportion of the regulations affecting farm businesses. Others include those from the environment, treasury, immigration, infrastructure and industry portfolios. Most of the concerns about regulatory burdens were about regulations that are not specific to the agriculture sector.
- State and territory governments administer regulations including in the areas of road transport, environmental protection, native vegetation management, land tenure and land use. As an indicator of the extent of regulation at the state and territory level, AgForce said that in Queensland, agriculture was affected by over 75 Acts and regulations covering 17 590 pages.
- Local governments implement regulations (often on behalf of state and territory governments) in the areas of land use, planning and (in some cases) environmental protection, as well as setting conditions for local road access by heavy vehicles and farm machinery.

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<sup>1</sup> User charges and taxation are not in scope.

**Table 1 Regulation across the agricultural supply chain<sup>a,b</sup>**

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

<sup>a</sup>*Italics* denote local government responsibility in at least one jurisdiction. <sup>b</sup>There are also a range of issues and regulations that affect all stages of the agricultural supply chain. Cross-cutting issues include investment opportunities and access to capital, as well as regulations relating to competition, foreign investment, immigration, industrial relations, work health and safety, and taxation.

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

Farm businesses are very concerned about the cumulative burden of regulation. Many farm businesses spoke about the large number of regulations that directly affect them. The Consolidated Pastoral Company (one of Australia's largest beef producers), for example, estimated that it complies with, or takes account of, over 300 Acts, regulations and codes.

It is the cumulative burden of regulation that provoked the most comment in consultations conducted on this inquiry. One participant (AgForce) said that:

The regulatory burden within Australian agriculture is effectively a cumulative one; resulting from the impact of many individual regulations of which each regulation, seen in isolation, does not appear to represent a significant imposition.

Another (the Tasmanian Farmers and Graziers Association) said that:

It is only when we have the accumulated burden of federal, state, local government and regional council associations that we begin to understand that with four or more layers of competing and often contradictory regulation it becomes near impossible to find an economical way through. When coupled with seemingly minor regulatory imposts, the competitive burden can become overwhelming. The malaise of regulation often leads to developments not proceeding on the basis that it is all too hard.

The Commission undertook a number of case studies to get a better sense of the magnitude of the cumulative burden of regulation on farm businesses.

Given the breadth (and depth) of the regulatory environment, the Commission was greatly assisted by inquiry participants in identifying areas of regulation where regulatory burdens are excessive. Suggestions for reform were assessed in terms of their potential to yield net benefits to the community.

## **2 Benefits, not just costs, are acknowledged**

By design, regulation imposes costs on those affected, including farm businesses. However, the benefits of well-designed and -implemented regulation would be expected to outweigh the costs to the community as a whole. Good regulation should also achieve its stated policy objectives at least cost to the community. The agriculture sector openly acknowledges that regulation is critical to its ability to function effectively. For example, Australia's biosecurity regulatory arrangements were highlighted as providing a reputational advantage to Australian farmers and access to premium export markets.

However, inquiry participants also identified regulations in a number of areas that impose unnecessary compliance and administrative costs on farm businesses that reduce flexibility

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or discourage innovation or the use of more efficient production techniques. Farm businesses provided many examples of unnecessary paperwork and excessive amounts of time and energy spent complying with regulatory requirements, such as applying for permits, filling out forms and reporting to regulators (box 1).

**Box 1                      Examples provided by farm businesses about excessive burdens of regulation**

A Queensland producer described what was required each time he moved his oversized agricultural machine between farms along 25 kilometres of a public road:

- two transport permits from the state transport department — one for the machine, and one for the route taken
- a railway crossing permit from the state's rail authority (this had to be lodged four days in advance, and the vehicle was required to cross the railway within the nominated time frame otherwise a new permit was required)
- two police drivers (the producer had to pay for the personnel time)
- a permit from the local council and the telecommunications and electricity infrastructure companies. While the permits lasted 12 months they took five days to process.

These types of application processes are time consuming, administratively burdensome and interfere with weather-dependent farming activities.

A landholder in New South Wales who sought to clear 1.2 hectares of land for a blueberry farm near Coffs Harbour found that state government approval was not required as the clearing was considered to be clearing of 'regrowth' under New South Wales native vegetation laws. However, because the proposed clearing area included the habitat (or potential habitat) of seven species listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), the landholder was required to submit 60 pages of documents and 18 maps to the Australian Government Department of the Environment. The outcome was that Commonwealth assessment and approval was not required, as only five of the protected plants were in the proposed clearing area (and thousands remained elsewhere on the property).

In sum, participants want the burden of regulation reduced, including its cumulative burden, but do not want to eliminate all regulations. And in some areas, such as competition policy, some are seeking more rather than less regulation.

### **3                      Some common themes**

#### **Questionable, unclear or conflicting regulatory objectives**

Some questionable objectives were uncovered when we asked the question, 'is the objective of the regulation affecting farm businesses clear and relevant?'. Examples include:

- the regulation of genetically modified organisms (GMO) for marketing purposes when there is evidence that industry (both in states without regulatory restrictions and



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internationally) can successfully manage the co-existence of GM and non-GM products. There is also little evidence of GMO-free marketing benefits at the bulk trade level

- the reregulation of sugar marketing in Queensland has the stated objective of allowing sugar cane growers to choose their marketing arrangements. However, the evidence suggests that the preferred choice of marketing arrangements is likely to reduce the productivity and profitability of the industry by constraining investment and structural adjustment
- coastal shipping regulation — the objective of reforms made in 2012 was to create a regulatory framework that ‘maximises the use of’ Australian vessels, but the effect was to increase the barriers to entry for foreign flagged vessels.

In other cases, assessing the effectiveness of regulation was difficult because the objectives are unclear or conflicting. Areas of particular concern are land use and environmental regulation. For example, some states’ native vegetation laws outline social and economic interests alongside environmental interests, but also aim to improve native vegetation (with an absence of guidance on how decision makers should weigh the objectives).

In the area of animal welfare regulation, the objectives are unclear because they are tied to community expectations, and these are not well understood or articulated (nor are the welfare implications of various farming practices well understood by the community). The lack of understanding and agreement about what community expectations are has also contributed to conflicts in the development of animal welfare standards and guidelines, particularly between industry and animal welfare groups.

The Australian Government has stated publicly that it welcomes foreign investment because of the important and beneficial role it plays in the Australian economy. However, it recently made changes to Australia’s foreign investment framework (in response to community concerns) that impose additional costs on foreign investors, create uncertainty, and could discourage investment in the agricultural sector. Government policy on foreign investment has at times been dissonant.

## Duplicative roles and regulation

Duplicative and overlapping regulation between the three tiers of government is a major area of concern. Farm businesses also spoke about overlapping reporting requirements and inconsistent decision making between regulators. Some examples include:

- overlap and duplication between the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act) and state native vegetation regulations
- overlapping Australian and state government responsibilities in the management of water resources. Farmers complained that they are required to submit the same or similar data to different agencies. Data sharing should be significantly increased in this area.

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## Regulatory inconsistencies across jurisdictions

In some areas, inconsistent regulation across jurisdictions was identified as a source of an unnecessary regulatory burden, making it difficult for farmers to understand their obligations and adding to the cost of doing business. There were calls for a more coordinated or national approach in a number of areas:

- *animal welfare* — inconsistent regulation makes it difficult to effectively inform and educate consumers, and inconsistent standards create uncertainty for industry
- *biosecurity* — while different regulations across jurisdictions reflect their specific risks, in some cases regulations can unnecessarily hinder access to interstate markets and add to the cost of transporting products between jurisdictions
- *heavy vehicle access regulations* — differences across the road network lead to increased compliance costs for producers (such as costly changes to vehicle configurations and loads to meet different requirements).

## Calls for more risk-based and flexible approaches

Regulations that are unnecessarily complex and overly prescriptive were identified in a number of areas, including planning and development, and work health and safety. For example, concerns were raised about the testing of agvet chemicals sometimes not taking into account assessments undertaken by well-regarded overseas regulators. Agvet chemicals that have been assessed and approved by well-regarded overseas regulators are unlikely to pose the same risks as those that have not. Failure to accept international evidence delays the availability of productivity-enhancing chemicals for farmers and adds to costs.

Native vegetation and biodiversity conservation regulations were also identified as being onerous and disproportionate to risk. Similarly, environmental regulations relating to noise, odour, air emissions and waste discharge were found to affect the efficiency and productivity of certain agricultural industries (particularly intensive livestock facilities). These impacts can be the result of the rigid application of regulations primarily designed for different industries, such as manufacturing, to the agricultural setting without a full assessment of the effects of doing so.

In some areas (including biosecurity and animal welfare), participants called for greater reliance on industry-led initiatives, such as quality assurance schemes, to improve regulatory outcomes and reduce the costs of complying with regulation.

## Good regulatory processes are not always observed in practice

Good regulation-making processes are essential for good quality regulation and evidence-based policy making. Participants to this inquiry strongly supported these

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processes. However, good regulation-making processes are frequently not followed in practice. The Commission found examples of:

- regulatory impact assessments (RIAs) that failed to rigorously assess the costs or benefits of regulations
- RIA processes that considered only a limited range of options
- regulations that were put in place despite a finding that the regulation would impose a net cost on the community
- RIA processes that appear to have been disproportionately influenced by particular stakeholders (box 2).

Stronger oversight of the quality of RIA processes is one way to reduce the incidence of regulations being put in place when there is no case for doing so. Wider and more systematic stakeholder engagement is another — drawing on a wider evidence base can improve the assessment of the costs and benefits of any proposed regulations. Stakeholder engagement is also an important step in determining whether regulation is the most apposite policy tool to use, and where it is, to design it so that it achieves its policy objective in the simplest and most cost-effective way. A number of participants to this inquiry commented favourably on stakeholder engagement on the *Biosecurity Act 2015* (Cwlth).

It is important that RIA processes are used as an essential analytical tool to support the quality of regulation making, not as a legitimising tool or compliance exercise. RIAs enable potential regulatory burdens to be considered before they are imposed, and place regulatory burdens in context (that is, against the potential benefits). Some of the regulations that farm businesses were most critical of were found not to have been subject to good RIA processes.

However, improving the quality of regulation involves more than good RIA processes. No one-off inquiry (such as this) or red-tape reduction target will be able to eliminate or reduce the regulatory burdens that comprise a ‘death by a thousand cuts’. As regulatory burdens (over all levels of government) change because of interactions with other regulations, it is not sufficient to merely examine the impact of new regulations. Policy makers within all government agencies should take responsibility for actively examining the impact of regulations under their remit to help inform the direction of policy and regulatory reform that could benefit the community. The price of liberty from unnecessary regulatory burdens is eternal vigilance.

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## Box 2      **Good RIA processes are not always followed in practice**

The Tasmanian Government prepared a regulation impact statement (RIS) to assess an extension of the moratorium on the commercial release of genetically modified (GM) organisms into the environment. A marketing advantage in domestic and international markets was noted as one of the main benefits of maintaining Tasmania's GM organism free status. However, the value of this was not quantified (but was assessed to be 'not insignificant'). The benefits of allowing GM crops were theoretically assessed as being relatively small. The RIS concluded that the (unquantified) benefits were likely to be substantial and to exceed the costs of extending the moratorium from 2014 to 2019. (By contrast, a cost-benefit analysis conducted as part of the review of the moratorium on GM canola in Victoria estimated that the Victorian moratorium imposed a net cost. The moratorium was allowed to expire.)

There were also examples of regulations being introduced despite findings that there would be a net cost to the community. In December 2015, the Queensland Parliament passed the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015* which reregulates the international marketing of Australian sugar. The amendments were introduced despite a highly critical RIS which found no case for the regulation and also that the costs would outweigh the benefits (and the overall returns to the sugar industry could be reduced). Similarly, the RIS for the (recently abolished) Road Safety Remuneration Tribunal found that the road safety remuneration system would lead to net costs.

The Commission also found examples where only a limited range of options were considered in RISs. One example was the RIS assessing the value of egg stamping in improving traceability. This RIS did not consider alternative traceability systems, such as egg carton labelling or requiring restaurants and caterers to keep records of the eggs they were supplied with.

Disproportionate industry influence in RISs was also raised as a concern by some participants. For example, for the newly endorsed sheep standards and guidelines, the assessment made in the RIS with respect to pain relief for mulesing was that the net incremental welfare benefits did not justify the additional compliance costs to industry. This assessment was based on the views of a reference group, which comprised representatives of 11 national livestock industry organisations, representatives from the eight state and territory relevant government departments, and the Australian Government, two animal welfare organisations and the Australian Veterinary Association.

## **Ongoing changes to regulations create uncertainty**

Changing regulations create uncertainty for farmers. Farmers stressed the importance of clarity in the objectives of regulation, and having sufficient time to adjust to regulatory changes. For example, fears of future changes to native vegetation regulations can create perverse incentives by encouraging landholders to plant exotic plants instead of native plants, or clear native vegetation as insurance against future policy changes. This type of pre-emptive clearing was recently reported to be occurring in Queensland ahead of foreshadowed changes to the laws in that state.

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## **Regulators could be better communicators**

In some areas, regulations could be clearer and regulators could do more to communicate regulatory requirements to farm businesses and their advisors — complexity adds to compliance costs and a potentially higher incidence of inadvertent non-compliance by farm businesses. A number of farm businesses (especially small farm businesses) complained that they struggled to navigate their way through the complex web of rules. GrainGrowers, for example, said that:

A key issue for farmers navigating the regulatory space is the lack of clarity around what regulations apply to different activities and how best farmers can work within their legal boundaries. The time spent attempting to work out regulatory requirements, including the many potential ‘missteps’ that can occur along the way due to misinterpretations or lack of knowledge, are themselves a form of red tape.

Work health and safety and environmental regulations were identified as areas where complexity is a particular concern.

## **4 Issues by topic area**

### **Land use and access regulations**

About half of Australia’s land area is used for agriculture, with most of the land used for grazing. Land use for agriculture has come under increased scrutiny in recent years as a result of:

- the expansion of major urban centres and increasing residential populations in city fringe (peri-urban) areas
- the trend towards more intensive farming practices (which may affect the amenity of nearby residential areas)
- growing environmental awareness and the conversion of agricultural land to national parks and conservation areas.

These issues have put pressure on regulators to intervene in land use conflicts, including to curtail particular land use activities. Managing these tensions in a way that facilitates the allocation of land to its highest value use is a key challenge for policy makers. It involves balancing land use against other considerations, such as the environment and native title interests.

### **Effective management of Crown land through reforms to leases**

Restrictions on the use of Crown land place unnecessary burdens on farm businesses that lease Crown land. Pastoral leases offer less security of tenure than freehold land, creating uncertainty for leaseholders and investors. In addition, pastoral leases generally require

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land to be used for a specific purpose, which, in conjunction with the difficulties associated with obtaining approvals for alternative uses, can hamper the ability of farmers to flexibly respond to environmental, economic and other factors.

Reforms from recent reviews relating to Crown land and pastoral leases have the potential to improve security of tenure and land use flexibility for leaseholders, and to promote more efficient use of, and investment in, land. Possible solutions include:

- extending the length of leases or introducing rolling leases
- allowing the conversion of leases to freehold land
- streamlining land use restrictions, including implementing land management objectives directly through land use regulation, rather than through pastoral lease conditions.

### Managing conflicts between agriculture and other land uses

Another concern for farm businesses is the conflict between agricultural and other land uses, particularly residential land use, and resource exploration and extraction. There is a role for government in promoting the efficient allocation of land rights and the timely resolution of land rights conflicts. However:

- policies that seek to protect existing land uses as an *a priori* objective are unlikely to be consistent with the promotion of efficient land use
- it is likely that conflicts between residential and agricultural land uses would be more effectively managed directly through planning and zoning regulations, rather than indirectly through laws barring actions in nuisance against agricultural land uses ('right to farm' laws)
- granting farmers a right of veto over land access by resource companies would arbitrarily transfer property rights from the community as a whole to individual landholders and would not be consistent with facilitating efficient overall land use.

In principle, the beneficiaries of any additional property rights, such as those arising from the conversion of leasehold to freehold title or the right to veto land access, should bear the opportunity cost of that allocation. This includes any increase in the market value of the land, as well as any administrative costs of implementing the change. Aligning the incidence of the costs and the benefits of property rights helps ensure that their allocation is efficient and that land is put to its most valuable use.

### Planning, zoning and development processes are a continual regulatory concern

Planning, zoning and development assessment processes can be a significant source of unnecessary burdens for farmers. Many of these regulations and processes are unnecessarily complex, time consuming and costly. While there are many recent and ongoing reviews of these issues, adoption of leading practices has been patchy and slow. In addition, planning regulations, such as building codes and the classification of intensive

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agriculture, sometimes fail to meet their regulatory objectives because they are not readily adaptable or targeted for managing agricultural land uses. These problems could be addressed by ensuring that regulation is fit for purpose and implementing outcomes-based (rather than prescriptive) regulation.

## **Environmental regulation**

Farmers, as significant landholders, play an important role as managers of the environment. Farmers have an incentive to conserve the environment where doing so provides a net benefit to their business. But there can also be public benefits from environmental conservation (hence a role for governments).

Regulations aimed at the conservation of native vegetation, biodiversity and threatened species are complex. There are also multiple pieces of legislation with many overlapping federal, state and (sometimes) local government requirements, as well as international conventions to which Australia is a signatory.

The Commission heard that native vegetation and biodiversity conservation regulations may:

- impede productivity improvements, including by limiting farmers' capacity to respond to changing circumstances. For example, the Australian Farm Institute described New South Wales native vegetation laws as 'a cumbersome and tangled web of productivity-sapping regulations'
- place considerable costs on farm businesses, including the cost of conserving species and ecosystems that benefit the wider community
- involve complex and costly processes (including the need to obtain and pay for detailed specialist advice about the presence of threatened species on the property)
- be duplicated across different levels of government. A farmer wanting to clear trees may need approval from both the Australian Government under the EPBC Act and the relevant state government under its native vegetation and/or threatened species legislation
- be in some cases administered in a very bureaucratic and inflexible fashion. While states' native vegetation legislation typically seeks to promote social, economic and environmental interests, in some states these laws are administered by regulators who are unwilling to tolerate any environmental harm, even for potentially large social or economic benefits (and thus take a lexicographic approach to environmental protection)
- be rigid and contribute to landholders' distrust of government, and limit their voluntary participation in environmental programs and actions (box 3).

Governments are addressing some of these concerns, including by developing consistent assessment processes for the listing of threatened species and establishing one-stop shops

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for environmental assessments and approvals. The Commission supports the continuation of these initiatives. However, further action is required.

**Box 3            One farmer's experience when trying to improve environmental outcomes**

The owner and operator of a large cotton farming business on the Macintyre river in southern Queensland told the Commission about his experience dealing with regulatory agencies and local councils when trying to improve environmental outcomes on his property. A recent flood event led to frog spawning and an increase in the water bird population on the farmer's property. The farmer sought to prolong this natural event by adding water from his farm to the natural flow. Timing was critical because, in order to benefit the bird population, the water from the farm needed to arrive before the natural flow dried up.

It took the farmer six weeks to negotiate with multiple agencies (at considerable cost) before permission was granted to supply water for this ecological application. The lengthy delays reduced the effectiveness of the water flow. According to the farmer, each agency was focused exclusively on its area of responsibility and they were unable to work together. For example:

- the authority in charge of stock routes initially rejected the proposal due to its potential to cause erosion, while the local council was concerned with flood risk
- the farmer had to build a pipeline under a main road to reduce the risk of erosion as well as increase the capacity of the culvert (to allow water flow) that was already in place
- a temporary weir was built at the head of this pipeline to make it more effective, but had to be removed following a complaint from a local resident.

The farmer reported that he had to convince an environment authority of the merits of the proposal. He hired a zoologist to monitor bird species before and after the flow. The farmer was also required to design the activity to fit within the regional irrigation management plan, and to gain permission from other landholders. He was also required to test the water quality before and after the flow.

According to the farmer, the environment agency insisted that the project be labelled as a 'pilot' so that it did not form a precedent committing them to similar projects in future. The farmer, however, would like to do similar projects more efficiently in future.

Although the flow did eventually take place, its biological effectiveness was reduced by the delay. The experience left the farmer with a sense that regulatory agencies exist to inhibit rather than enable innovative projects.

*Source:* Productivity Commission case study interview (appendix C).

Native vegetation and biodiversity conservation regulations should be changed so that they consistently consider economic, social and environmental factors; account for the impact of proposed activities on the landscape or the region (not just the impact on individual properties); and are based on an assessment of environmental risks.

Better use could be made of market-based approaches to native vegetation and biodiversity conservation. This could include governments buying environmental services (such as native vegetation retention and management) from landholders. Requiring governments to fund conservation helps discipline governments' demand for conservation on private land



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(rather than treating it as a ‘free good’ where more is always better). Importantly, where governments choose to allocate land for conservation, they should provide adequate funding to manage and maintain the holdings free from weeds and pests which can affect adjoining properties.

The administration of native vegetation and biodiversity conservation regulations could also be improved (including in some cases, changing the ways in which regulators work with landholders). Governments could improve the advice and support they provide to landholders, so landholders are more aware of environmental regulations and what is required of them under the regulations. This would be facilitated by building the capability of, and landholders’ trust in, environmental regulators.

## **Water regulation**

Water is an essential input for farm businesses. It is used for irrigating crops, as drinking water for livestock and for managing waste in intensive livestock and processing industries. The agricultural sector accounts for around two-thirds of Australia’s total water consumption.

Water regulation at the farm level is focused on creating markets in regions (where this is viable) to allow surface water to be traded to its highest value uses. Farmers reported that water trading has increased the productivity of their businesses by providing them with the flexibility to buy and sell water in response to changing market and seasonal conditions. While farmers reported that there is room for improvement, they also said that the process of trading water is gradually becoming faster and more efficient.

As regulation of surface water matures, the attention of regulators is turning to groundwater and the interception of overland flows on farms. The regulation of groundwater and overland flows has the potential to increase the security of the water entitlements held by farm businesses.

Complexity and change in water regulation is contributing to the cumulative burden felt by farm businesses. The diversity of Australia’s river catchments limits the potential to address this complexity by streamlining regulation and making it more uniform. More flexible governance arrangements may be needed to develop locally apposite regulations for accessing water. The Commission will examine these and other water-related matters in its future work program in light of the repeal of the *National Water Commission Act 2004* (Cwlth).

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## Regulation of farm animal welfare

A number of concerns about farm animal welfare were raised by participants, including that:

- animal welfare regulations are not meeting community expectations about the humane treatment of farm animals
- there is a risk that unnecessary regulations will be imposed on farmers based on emotive reactions rather than evidence-based policy (including evidence on what represents an improvement in the welfare of farm animals and how this is valued by the community)
- the current arrangements are a patchwork of different standards that impose costs on businesses operating in more than one state, create confusion for consumers and reduce competition between producers (free-range hen stocking densities were raised as an example)
- there are conflicts of interest under the current governance arrangements.

Australians generally accept the rearing of animals for commercial purposes (revealed by their consumption of animals as food or in other products). They also place a value on farm animal health and wellbeing (welfare) and benefit from knowing animals are being treated humanely.

Good animal management practices are an essential part of commercial livestock operations. Many welfare improvements increase the productivity and profitability of livestock operations. Producers also have an incentive to improve animal welfare to meet changing consumer demands for higher welfare products. However, some welfare measures, such as those that reduce the intensity of production processes, may increase costs without offsetting gains to the business.

Farm animal welfare is a policy area that is expected to evolve over time as community attitudes change and as new scientific evidence becomes available. The policy challenge is to have arrangements in place that can transparently deliver balanced outcomes over time.

### Regulation of domestic farm animal welfare could be improved

Since the 1980s, the welfare of farm animals in Australia has been governed by a series of national Model Codes of Practice, implemented by state and territory governments (many of which were implemented as voluntary standards). The codes cover a number of categories of livestock (cattle, poultry, pigs and sheep) and include land transport, processing, and saleyard codes. In 2005, the Australian, state and territory governments agreed to convert the codes into mandatory standards and voluntary guidelines that reflect contemporary scientific knowledge and community expectations for animal welfare. However, progress has been very slow.

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There is scope for greater rigour and balance in the process of developing national farm animal welfare standards and guidelines. And importantly, for science and (soundly elicited) community values and expectations to play a more prominent role. Without reform to the process, there is a risk that the agricultural sector, and the Australian community, could continue to be faced with a patchwork of different regulatory arrangements across jurisdictions that do not rigorously balance economic and social considerations. There are three areas where farm animal welfare regulations could be improved.

- The objective of the national standards and guidelines needs to be clearer.
- Standards and guidelines should be evidence-based, drawing on the existing body of evidence on animal welfare science and research on community views of animal welfare. This evidence should also be used in RIA processes.
- There needs to be more independence in the standards development process so that outcomes are not overly influenced by the views of any one group, such as industry or animal welfare or rights groups. Judgments made to balance conflicting considerations should be transparent and apply rigorous scientific principles. Surveys of community expectations for animal welfare should be statistically robust and transparent.

The Commission considered a number of options to improve the standard setting process. These included establishing an independent animal science and community ethics advisory body to provide independent advice in the standards setting process, or alternatively, for an independent body to be responsible for developing the standards and guidelines. Another option considered was the Australian Government taking responsibility for all aspects of farm animal welfare regulation.

On balance, the Commission considers that the most effective approach would be to establish an independent body tasked with developing the national standards and guidelines. The body would be responsible for managing the RIA process for the proposed standards, and would include a science and community ethics advisory committee to provide independent and rigorous evidence on animal welfare science and community values. The body would also disseminate information to the community on best-practice farm animal husbandry practices and contemporary animal welfare science, including through the development and publication of the standards and guidelines.

The body could also be responsible for regularly providing an independent assessment of the effectiveness of monitoring and enforcement activities, and assessing the performance of the live export regulatory system.

### Live export regulation is costly but has led to some improvements

Following the public response to ABC's *Four Corners* footage of mistreatment of Australian animals in some Indonesian abattoirs in mid-2011, Australian trade of cattle for slaughter to Indonesia was temporarily suspended. During the suspension, the Australian

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Government and industry developed a new regulatory framework — the Exporter Supply Chain Assurance System (ESCAS). The ESCAS was first implemented in Indonesia in August 2011 and then extended to all countries receiving Australian livestock during 2012.

The ESCAS has the objectives of:

- providing assurance to the Australian community that the welfare of animals exported from Australia is maintained through to the point of slaughter in the importing country
- facilitating the livestock export trade so that exporters can increase market share overseas.

Industry and animal welfare groups support the ESCAS, although some animal welfare and animal rights groups would prefer a ban on live exports, and along with some other participants, argued for the system to be strengthened. There has also been a renewed call for a ban on live exports following reports of inappropriate handling and slaughter of cattle at ESCAS facilities in Vietnam in June 2016.

The ESCAS has led to some improvements in welfare outcomes for Australian livestock in some overseas export supply chains. For example, the rate of pre-slaughter stunning has increased in Indonesia, as has awareness of international welfare standards in some overseas countries.

However, industry raised concerns about the significant administrative burden that the system imposes. The regulatory burden on exporters could be reduced through greater cooperation between exporters themselves, including the sharing of audits and reliance on an industry quality assurance program that involves animal welfare assurance and independent auditing.

Whether an industry-developed quality assurance program could be used by exporters to demonstrate compliance with the requirements of the ESCAS depends on whether it can be shown to assure the welfare of Australian live exports in line with the Australian community's expectations. It is critical that the community has confidence in the system used to regulate live exports. Incidents of mistreatment of animals in facilities that are within the purview of the ESCAS, and that are overseen by the Australian livestock industry, reduce community confidence in the trade and the regulator's effectiveness.

## **Genetically modified crops**

State and territory moratoria on the cultivation of genetically modified crops were a major concern of participants. Many argued that the moratoria (effectively bans) on GM crops were unwarranted and that they deny farmers access to technological advances that are critical to remaining competitive internationally.

The effect of GMOs on human health and safety and the environment is assessed at a national level by the Office of the Gene Technology Regulator (OGTR). The OGTR is a

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respected regulatory body that relies on credible scientific evidence. It conducts risk assessments on GMOs, identifies risk management controls, and grants licences for dealings with GMOs. Before issuing a licence for use of a GMO, the regulator must be satisfied that any risks to health, safety and the environment can be managed. The OGTR has approved certain varieties of GM cotton and canola for release in Australia, having assessed these to be no less safe than their conventional counterparts.

Despite this, a number of state and territory governments have imposed moratoria on the cultivation of GM crops, pointing to market access and trade benefits such as price premiums for non-GM crops. These benefits are questionable. However, even in the presence of such benefits, because GM and non-GM production systems can coexist, the claimed benefits of the moratoria would be able to be achieved. (The ability for GM and non-GM crops to coexist has been demonstrated both in Australia and overseas.)

New South Wales, Western Australia, South Australia, Tasmania and the Australian Capital Territory should remove their moratoria. State and territory governments should also repeal the legislation that imposes moratoria or gives them the discretion to designate GM-free zones. This will provide certainty to businesses that the moratoria will not be re-introduced in the future.

Removal of the moratoria should also be accompanied by providing accurate information to the community about the actual risks and benefits of GM technology, and the gene technology regulatory framework in Australia. This should help build confidence in Australia's regulation of GM technology. Government agencies in charge of the agriculture portfolio at the state and territory level should provide this information, and could be supported by the OGTR and Food Standards Australia New Zealand (FSANZ) at the national level.

## **Regulation of agricultural and veterinary chemicals**

Access to agvet chemicals depends on an array of regulations administered by the Australian, state and territory governments. The Australian Government controls all regulatory aspects of agvet chemicals up to the point of sale, and state and territory governments are responsible for controlling the use of agvet chemicals after retail sale. The Australian Pesticides and Veterinary Medicines Authority (APVMA) is an independent statutory regulator that discharges the responsibilities of the Australian Government. This includes assessing chemical products for their impact on human health, the environment, and trade, as well as for their efficacy.

Despite numerous reviews of, and subsequent changes to, the regulation of agvet chemicals, problems remain. Inquiry participants highlighted that the registration and assessment requirements for products already registered overseas are often duplicative, with the result that farm businesses are prevented from, or delayed in, accessing important agvet chemicals. While the APVMA already takes international evidence into account in its assessments, there is scope to do more. For example, the APVMA could rely on the

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registration decisions of reputable and comparable international regulatory agencies with similar outcomes in risk management. The Department of Agriculture and Water Resources is considering reform in this area and the Commission considers that this work should be pursued with high priority.

There are also differences in state and territory control-of-use regimes for agvet chemicals. In particular, there are differences in permitted ‘off-label’ uses, and these are not justified by regional factors such as geography. A national control-of-use regime has been proposed, but progress has been slow and the proposed scheme only includes minimal harmonisation of off-label use provisions. Work on implementing a single control-of-use regime (that includes increased harmonisation of off-label use provisions) should progress more rapidly, and the regime should be in place by the end of 2018.

## **Biosecurity regulation**

Australia’s biosecurity system is vital to maintaining the competitiveness of the agricultural sector and protecting Australia’s unique environment. The entry of serious exotic pests, weeds or diseases into Australia would have a major impact on Australian farmers, including loss of production and access to premium export markets. Biosecurity activities also protect the community from harmful diseases and the natural environment from exotic threats. An effective biosecurity system should be risk-based, and not used to protect local industries from international competition.

The Australian Government has recently modernised biosecurity legislation by introducing the Biosecurity Act, which took effect in June 2016. The new Act is designed to reduce red tape and provide a more flexible risk-based approach to compliance.

Many inquiry participants were highly supportive of the new Act, but some concerns were raised about self-regulation by industry through approved arrangements and the potential for adverse impacts on Australia’s biosecurity system. Assessing the impact of approved arrangements is difficult given the Act only took effect in June 2016. However, businesses were previously able to apply to self assess risks under the *Quarantine Act 1908* (Cwlth). The new approved arrangements mainly streamline this application process, reducing costs to businesses.

Another area of concern was that the governance arrangements for biosecurity remain siloed, with a lack of coordination across states and territories (each of which have biosecurity regulations). While states and territories can face different risks, unnecessarily different biosecurity regulations can create barriers to interstate trade.

Australia’s biosecurity system will be most effective when resources are targeted to those areas of greatest return to the nation, from a risk management perspective (including whether resources are directed towards pre- and post-border activities or towards particular diseases, weeds or threats). Positive progress has been made towards a more coordinated approach to Australia’s biosecurity arrangements, and developing national priorities for

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investment. The current independent review of the Intergovernmental Agreement on Biosecurity will assess the effectiveness of the agreement and its capacity to support a national biosecurity system going forward. The review should also look at whether clearer national leadership (by the Australian Government or another national body) could improve Australia's biosecurity system.

## **Transport regulations**

Given the long distances between many of Australia's farms, intermediaries (such as sale yards and abattoirs) and end users, an efficient and cost-effective transport system is critical to the competitiveness of the agricultural sector. Most transport regulation concerns for farmers related to heavy vehicle road access, and included:

- inconsistent heavy vehicle regulation between jurisdictions
- restrictions on access to the road network, especially for the 'first and last mile' of a journey
- processing times for road access permits
- restrictions on moving agricultural machinery.

The creation of the National Heavy Vehicle Regulator (NHVR) is a step in the right direction for improving road access. However, heavy vehicle operators continue to deal with variations in regulations across jurisdictions and delays in obtaining road permits. The NHVR should be reviewed to ensure the system is delivering net benefits.

The time taken to process road access permits is prolonged because consent is required from state and local government road managers. To reduce the time required to obtain permits, the states and territories that are participating in the Heavy Vehicle National Law should look to increase the number of road routes that are gazetted for heavy vehicle access. This could be achieved by allowing industry to propose and undertake road route assessments for gazettal (as is currently the case in South Australia), or by directly funding assessments of both state and local roads (as in Queensland). Ideally, permits would only be required when there is a significant risk to public safety or infrastructure that must be managed on a case-by-case basis.

Road access restrictions can be partly attributed to the road funding model which does not link the cost of road use with road investment. A direct (or more cost-reflective) road user charging system could ensure a sustainable revenue base to recover road expenditures, and remove the need for road managers to restrict heavy vehicle access. (Pricing reform would also help address concerns over the effect of pricing distortions on investment in rail networks.) A Road Fund model (an institutional framework that involves a dedicated body responsible for managing the allocation of road revenues to road projects) would assist in ensuring that road investments are directed to where they have the highest value to road users. Better data on road user needs and the state of road assets is also required.

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Farmers are required to obtain multiple permits and comply with other regulatory requirements (such as curfews and police escorts) to move oversized agricultural machinery on public roads. This can seriously interfere with weather-dependent activities that are time sensitive and need to take place at short notice. Issuing permits for longer periods of time or for multiple journeys, or removing the need for permits by making greater use of gazettal notices, would give farmers more flexibility.

Heavy vehicle operators must comply with driver safety regulations. The Road Safety Remuneration Tribunal had significant overlaps with existing heavy vehicle safety regulations, and poor regulatory processes were followed in its establishment. There was no evidence to suggest that such strong regulation of remuneration in the road transport sector was necessary. There was also no conclusive evidence of the link between remuneration and safety outcomes. The abolition of the Road Safety Remuneration Tribunal will reduce the burden of regulation. It is important that the resources reallocated from the Road Safety Remuneration Tribunal to the NHVR are used to improve road safety in all states and territories.

Other unnecessary transport-related regulatory burdens on farm businesses include:

- coastal shipping regulations which, by giving preference to Australian-flagged ships for transporting domestic cargo between Australian ports and extending the application of the *Fair Work Act 2009* (Cwlth) to foreign-flagged ships, increase costs for farm businesses reliant on sea freight. (As an example, Voice of Horticulture said that it costs \$7.00 to ship a box of fruit from Tasmania to Brisbane, but only \$5.60 to ship it from Tasmania to China.) To increase competition in coastal waters, coastal shipping laws should be amended to substantially reduce barriers to entry for foreign vessels
- ethanol mandates and excise arrangements. These should be removed as they deliver negligible environmental benefits and impose unnecessary costs on farmers and the community.

## Food regulation

Governments in Australia regulate food to support public health and safety and inform consumer decisions about food. Food labelling regulations seek to ensure that labels convey correct and relevant information to consumers, while regulations regarding the production process protect consumers against unsafe practices.

### Regulation of food labelling

Food labelling concerns were raised in four areas — country-of-origin labelling (CoOL), free-range egg labelling, labelling of GM foods, and gluten-free labelling.

CoOL requirements are confusing for consumers and limit Australian producers' ability to differentiate their products. To address these concerns, a new CoOL framework was



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announced in March 2016. The new system requires products labelled ‘made in Australia’ to identify the proportion of Australian ingredients they contain. The new system is expected to help clarify the meanings of country-of-origin claims and save consumers time (by providing better visual elements on labels). What is unclear, however, is whether the new arrangements will deliver *higher* net benefits to the community as a mandatory or a voluntary system. A voluntary system could result in higher net benefits because a mandatory system imposes costs on all producers, but not all consumers’ purchasing decisions are driven by country of origin. The Commission is seeking further information on the costs and benefits of a mandatory system compared to a voluntary system.

The production methods used for eggs labelled as ‘free-range’ do not always align with consumers’ expectations (or understanding) of those methods, and consumers lack confidence that they are getting what they are paying for. The Australian Government recently announced an information standard for free-range eggs to create consistency and allow consumers to compare different ‘free-range’ eggs. The standard provides a definition for the term ‘free-range’ (with a maximum outdoor stocking density of 10 000 hens per hectare) and requires producers who claim that their eggs are free-range to prominently disclose the stocking density on the label. Compliance with the information standard provides producers with a safe harbour defence against allegations that they are engaged in false and misleading conduct.

The new standard should provide greater clarity for consumers. However, because poultry welfare outcomes are affected by the production system used (and hen welfare is one of the key reasons why consumers purchase free-range eggs), there should be consistency between animal welfare and egg labelling standards. The new information standard for free-range eggs was established independently of the conversion of the Model Code of Practice for poultry welfare into mandatory national standards and voluntary guidelines, and may need to be revised after this conversion has occurred.

Some participants argued that mandatory labelling of GM should be removed because GM foods are safe (and mandatory labelling imposes a cost on businesses). All GM foods must undergo a safety assessment by FSANZ, and therefore GM labelling is a consumer value issue, not a food safety issue. The Commission is not convinced that GM labelling should be mandatory merely to inform consumer choices — if consumers want to avoid GM foods, suppliers have an incentive to respond by voluntarily labelling their product as ‘GM-free’.

While some consumers may use GM labels as an indication of food safety, the labelling of food in this way conflicts with regulatory assessments of the safety of GM foods. Consumers’ concerns about the safety of GM foods would be better addressed by providing accurate and accessible information about the scientific evidence.

Gluten-free labels play an important role in ensuring the safety of food for some consumers. Australia’s gluten-free labelling regulations are stricter than international standards, and evidence suggests that this is a barrier to the adoption of innovations in gluten-free foods such as the ultra-low gluten barley. The labelling standard should be

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reviewed by FSANZ taking into account international standards and scientific evidence on the level of gluten that imposes a risk to gluten-intolerant consumers.

## Regulation of food safety in the production process

The two key food safety concerns raised by participants related to egg stamping and food safety audits.

The Commission did not find evidence that egg stamping provides higher net benefits to the community than alternative approaches, such as requiring cartons to be labelled or requiring caterers to keep records, but seeks further information on this issue.

The costs and duplication of food safety audits, including those required by regulators, food retailers and export markets were also highlighted as an issue by participants. While a number of participants argued that food safety audits impose an unnecessary regulatory burden, often they were referring to audits conducted by commercial customers rather than those conducted for regulatory purposes. The Australian Food and Grocery Council and Horticulture Innovation Australia are currently working on aligning commercial auditing requirements of the major retailers to reduce the burden imposed on producers. Governments have also made good progress in minimising the burden of regulatory food safety audits by combining audits required under domestic and export regulations. The Commission did not identify significant scope for governments to further reduce the burden of regulatory food safety audits, but is seeking further information on this issue.

## Foreign investment in Australian agriculture

Australia, as a relatively small open economy, relies (and has historically relied) on foreign investment to bridge the gap between national savings and investment.

The benefits of foreign investment to Australia's agricultural sector, including access to new technology, skills, knowledge and global supply chains, were readily acknowledged by participants. However, there is substantial public concern surrounding foreign investment in the agricultural sector. A number of public surveys, including the ABC's *Vote Compass* surveys and annual polls conducted by the Lowy Institute for International Policy, show that many Australians do not support foreign investment, and that they are particularly concerned about foreign investment in agriculture.

Some of the concerns, including fears that foreign investment will reduce Australia's food security, or result in a 'land grab' and loss of sovereign control over prime agricultural land, appear misplaced and may have arisen in part because of a lack of information and informed debate about foreign investment in Australian agriculture.

Australia's foreign investment review framework aims to balance the benefits of foreign investment against potential risks to Australia's national interest. The Treasurer's prior

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approval is required for foreign acquisitions of agricultural businesses and land valued above prescribed thresholds (which trigger review of foreign investment proposals by the Foreign Investment Review Board).

In 2015, the Australian Government made a number of changes to the foreign investment review framework for the agricultural sector. These included:

- significantly lowering the screening thresholds for agribusiness (to \$55 million) and agricultural land (to \$15 million, based on cumulative land holdings) for investors from most countries
- establishing a national register of foreign ownership of agricultural land
- introducing application fees for all foreign investment proposals.

Some participants raised concerns about these changes, including that:

- lower thresholds could deter foreign investment in Australian agriculture and contribute to delays in processing investment proposals (as more proposals now require screening)
- the lower and cumulative screening threshold (combined with the introduction of application fees) for proposed investments in agricultural land could deter investment, impeding improvements to the sector's competitiveness and productivity.

### Do the benefits of increased scrutiny outweigh the costs?

The lower screening thresholds (combined with different thresholds depending on the investor's country of origin) will increase the cost and complexity of investing in Australian agriculture. There is a risk that this will ultimately deter foreign investment in the sector without offsetting public benefits, particularly as other measures (such as the agricultural land register) are in place to increase transparency and public confidence about foreign investment in Australian agriculture. It is also unclear that national interest considerations are different for foreign investors proposing to invest in agriculture compared to other sectors of the economy that have a higher screening threshold of \$252 million (including acquisitions in sensitive businesses, such as telecommunications, transport, defence and military related industries).

The Australian Government should raise the screening thresholds for agricultural land and agribusiness to \$252 million — in line with the thresholds that applied for agriculture prior to 2015, and those that currently apply to business acquisitions and developed commercial land for investors from most countries.

Transparency (to the extent that it is consistent with national interest considerations) of the Treasurer's decisions on proposed foreign investments is important as it provides information to the public about foreign investment in agriculture. The register of foreign ownership of agricultural land should go some way towards increasing transparency and addressing public concerns about foreign investment in agriculture, although this will depend on the content of the Australian Tax Office reports derived from the register.

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## Employing overseas workers

The ability to access overseas workers is important for addressing labour shortages in the agricultural sector. Farm businesses reported high compliance costs associated with the temporary work (skilled) 457 visa programme and noted features of the programme that limit their access to overseas workers. Many of the concerns raised by participants were addressed in a recent independent review of the 457 visa programme (the Azarias review).

The recent proposal to tax working holiday makers as non-residents also generated some concern on the basis that it could dissuade overseas workers from coming to Australia. The Government is currently reviewing the proposal. This review will also look at the requirement for employers to make superannuation guarantee payments for working holiday makers (who, like other temporary residents, can access their superannuation when they depart Australia).

Most temporary residents are unlikely to use superannuation to save for retirement and some farm businesses claimed that being required to pay superannuation for temporary residents was an unnecessary compliance cost. While there are costs to farm businesses in administering superannuation guarantee arrangements for temporary residents, any changes to address these could have broader and unintended economic effects, and these effects should be considered by the review.

## Competition policy

Competition is a key driver of innovation, productivity and competitiveness in agriculture. However, there are longstanding concerns about small farm businesses being subject to anticompetitive behaviour from dominant market players in the supply chain. Statutory marketing arrangements historically were used in attempts to provide farm businesses with countervailing market power. However, most of these arrangements have been removed and now concerns about anticompetitive behaviour are addressed under competition laws and industry codes of conduct.

The Rice Marketing Board in New South Wales is one of only two statutory marketing arrangement remaining. One of the board's objectives is to secure the best possible price for Australian rice in export markets. However, it is unclear whether Australian rice exporters receive a price premium for their rice. Repealing the *Rice Marketing Act 1983* (NSW) will create incentives for innovation and cost savings in rice marketing that could increase premiums for some rice growers.

It is illegal to sell fresh potatoes grown in Western Australia for human consumption without a licence from the Potato Marketing Corporation (a statutory marketing organisation of the Western Australian Government). The regulation of Western Australia's potato industry had its origins in concerns about reliable food supplies during World War II. The arrangements are out-of-date and have resulted in less variety and higher potato prices for Western Australian consumers. A Bill to abolish the Potato

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Marketing Corporation is currently before the Western Australian Parliament. The planned deregulation of the potato industry in Western Australia will improve the responsiveness of the industry to changing consumer preferences and reduce the cost of potatoes in Western Australia.

Legislation was also passed in Queensland in December 2015 to enable sugarcane growers to direct how millers market sugar internationally. This is likely to restrict competition and deter investment in milling capacity and innovative marketing. Reduced or degraded milling capacity is likely to reduce the productivity of the industry as well as incentives for structural adjustment in sugarcane growing. There will also be less competition if existing sugar millers decide to leave the industry.

The existing competition regulation and oversight is adequate for managing concerns about abuse of market power by supermarkets and traders engaging with farm businesses. The current focus on the potential for the misuse of market power by wholesale merchants and supermarkets engaging with farmers is not well supported by evidence.

Suggestions to amend section 45 of the *Competition and Consumer Act 2010* (Cwlth) are unlikely to increase the adoption of collective bargaining because they do not address significant economic disincentives and a cultural aversion in the agricultural sector to participating in cooperatives. Introducing an ‘effects’ test to section 46 of the Act is also unlikely to shield farm businesses from intense competition in retail food markets.



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# Draft recommendations, findings and information requests

## Land use regulation

### 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.

### 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.

### 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.

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#### 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?*

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#### 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.

## 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.

#### 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.



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#### 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
- building the capability of, and landholders' trust in, environmental regulators.

## On-farm regulation of 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.

#### 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.

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## Regulation of farm 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.

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### INFORMATION REQUEST 5.1

*The Commission is seeking feedback on:*

- *the most effective governance structure for an independent body tasked with assessing and developing standards and guidelines for farm animal welfare*
- *what the body's responsibilities should include (and whether it should make decisions or recommendations and if the latter, to whom)*
- *what processes the body should use to inform and gauge community values on farm animal welfare*
- *how such a body should be funded.*

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### 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.

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## Access to technologies and agricultural and veterinary chemicals

### DRAFT FINDING 6.1

There is no economic or health and safety justification for banning the cultivation of genetically modified (GM) organisms.

- The Office of the Gene Technology Regulator (OGTR) and Food Standards Australia New Zealand (FSANZ) assess GM organisms and foods for their effect on health, safety and the environment. Scientific evidence indicates that GM organisms and foods approved by the OGTR and FSANZ are no less safe than their non-GM counterparts.
- The successful coexistence of GM and non-GM crops is possible and has been demonstrated both in Australia and overseas. This means that if there are any market access or trade benefits (including price premiums for non-GM products), they would be achieved regardless of whether GM crops are in the market.

### 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.

### 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.

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#### 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.

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#### INFORMATION REQUEST 6.1

*How well does the regulatory framework for technologies and agvet chemicals perform? Are the institutional arrangements and regulatory objectives underpinning the OGTR and APVMA appropriate and up to date? What improvements could be made?*

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## Biosecurity

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#### INFORMATION REQUEST 7.1

*Participants raised 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?*

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## Transport

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#### 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.

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#### 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.

#### 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 Funds, and the hypothecation of revenues in a way that incentivises the efficient supply of roads.

#### 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.

#### DRAFT FINDING 8.2

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

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#### 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 road safety in all states and territories.

#### 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.

#### DRAFT RECOMMENDATION 8.5

The Australian 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.

#### 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 Australian, New South Wales and Queensland Governments should remove these arrangements by the end of 2018.

## Food regulation

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#### 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.*

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DRAFT RECOMMENDATION 9.1

Food Standards Australia New Zealand should remove the requirement in the Food Standards Code to label genetically modified foods.

DRAFT RECOMMENDATION 9.2

Food Standards Australia New Zealand should review the standard for the level of gluten allowed in foods labelled as 'gluten-free', taking into account scientific evidence, international standards and risks to human health, and set a maximum allowable parts per million level for foods to be labelled 'gluten-free'.

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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?*

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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.*

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## Competition regulation

DRAFT RECOMMENDATION 11.1

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

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#### DRAFT FINDING 11.1

Statutory marketing of potatoes in Western Australia has reduced consumer choice and increased the price of potatoes in Western Australia. The Western Australian Government's plan to deregulate the industry will allow potato production in that state to respond to changing consumer preferences and reduce the cost of potatoes for consumers.

#### DRAFT RECOMMENDATION 11.2

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

#### 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.

## 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).

#### 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.



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## The way forward

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### *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.*

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