



REGULATION OF AUSTRALIAN AGRICULTURE

PRODUCTIVITY COMMISSION REVIEW

SUBMISSION FROM THE

WEST AUSTRALIAN PORK PRODUCERS
ASSOCIATION

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INTRODUCTION

The West Australian Pork Producers Association (Inc) (WAPPA) promotes and safeguards the interests of Western Australian pork producers. We make representation to all tiers of government and other non-government stakeholders on issues that will enhance the ability of the industry to meet its obligations, be productive and continue to grow its reputation with consumers and the community as responsible livestock producers.

The WA pork industry's strategic goals are:

- Increase consumption of fresh pork;
- Increase productivity (increase skilled labour through importation and training);
- Reduce costs across the supply chain; and
- Develop and grow export markets for pork products.

In its day to day operations the industry comes into contact with laws, regulations, by-laws, codes of practice and policies across all sectors of government and in many different disciplines. Regulation relating to the environment, planning, labour relations, water, immigration, animal welfare, bio-security and health and safety feature prominently.

The Productivity Commission Discussion Paper noted that not all regulation is unnecessary. Our industry certainly supports regulation that aims to protect our product and markets. As responsible corporate citizens and members of the community we also have a strong interest in protecting the environment and our reputation for high standards of production and animal husbandry. Over time however the amount of regulation and cross-over between agencies has reached a tipping point where there are incessant calls for reducing 'red tape'. Producers are frequently frustrated by the protracted processes they are confronted with when they want to expand or improve productivity through innovation. Some of these regulations have created uncertainty for investors, over-cautious decision making and excessive time-frames. This Review is therefore timely and welcome.

PROFILE OF THE WA PORK INDUSTRY

The industry's farmgate value is estimated at \$152 million with an add-on value of two dollars for every dollar at the farmgate, effectively valuing the industry in excess of \$300 million. The 1,700 full-time and part-time workers employed in the farm-to-plate supply chain highlight the importance of the pork industry to the WA economy. The WA industry represents approximately 12% of the total Australian industry.

Ninety percent of WA's sow herd is owned by 10 producers who utilise a number of independent contract grower farms who usually concentrate on one part of the production chain, either breeding or rearing. The two major contributors to the WA pig industry are on-farm production, and processing and manufacturing. Other associated industries also benefit from working with these major contributors, including the food service sector, major and local retailers, local butchers, feed producers and manufacturers, transporters, and animal health services.

A range of production systems are used in WA including straw based housing, intensive systems and free range. The adoptions of technology has resulted in more specialised breeder farms with contract grower farms finishing animals to market weights.

The industry is on the cusp of a significant period of growth with several major producers looking to expand their operations to meet growing domestic demand in addition to demand from Singapore,

Korea and Hong Kong. The expansion plans will require planning and environmental approvals and new employees.

The following information has been compiled from the practical experiences of our members.

ENVIRONMENTAL AND PLANNING REGULATION

Need for Clear Lines of Responsibility

Environmental and Planning regulation has been placed under the same heading because in Western Australia the two are entwined to such an extent that decision making is unwieldy and presents a significant obstacle to new agricultural development or expansion. Clear lines of responsibility are not evident to applicants or the officers working within the system. To make matters worse the various agencies rely on different guidelines that are not always compatible with one another. This lack of clarity makes it difficult for project proponents to plan and design with confidence and leads to drawn out approval processes often ending in appeals costing all parties time and money. For example recent public consultation processes in WA highlighted the following documents as being relevant to decision making on separation distances for piggeries:

- Health Act 1911 – Local Government
- Environmental Guidelines for New and Existing Piggeries 2000 – Agriculture WA
- Guidance for the assessment of Environmental factors-Separation distances between Industrial and Sensitive Land Uses 2005 – EPA WA
- Separation Distance Guidance Statement – DER WA
- National Environmental Guidelines for Piggeries 2010 2nd ed revised (NEGP)
- National Environmental Guidelines for Rotational Outdoor Piggeries (NEGROP)

Coincidentally the Environmental Protection Authority (EPA) reviewed its Environmental Assessment Guideline (EAG) for Separation Distances between Industrial and Sensitive Land Uses 2015 at the same time as the Department of Environment Regulation reviewed its separation distance guidance documents. Both documents differ in their requirements for piggeries and there was no apparent attempt to align them. The consequence of this is that EPA WA and DER assess the same piggery site with different requirements.

The expansion plans of one WA producer has taken frustrating twists and turns with no less than five different agencies being involved in the approval process. These include the DER, the local shire, Landcorp, Department of State Development, the South West Regional Planning Committee and ultimately the State Administrative Appeals Tribunal. Through this process the proponent found a reluctance by various agencies to make decisions with claims that their decision was contingent on the decision of the other which led to an impasse. Consequently the project was in limbo for two years.

Other inconsistencies arise that encourage participants to question the fairness of the system. For example deep litter based sheds compared to effluent based sheds do not need a licence yet the moment pigs are put into sheds they suddenly need a licence.

Unfortunately the system also allows individual bureaucrats to, at times, act capriciously leaving applicants powerless to respond positively and protect their investment. The passage of an application can be seriously affected by the relationship with individual officers or their personal

views about piggeries. Requests for additional information are made without any regard to the costs involved and without justification for the request. We know of one case where additional odour modelling was required at a cost of \$30,000 which delivered no new information. For that particular project an estimated \$500,000 was spent on additional legal and consultancy fees. Because of the urgency for approval, proponents accede to the requests. Evidence based decision making would assist in overcoming this issue.

Time Frames for Decisions

The process outlined above is destined to result in lengthy delays before a proponent receives a decision. Although some agencies have decision making timeframes such as 60 days, we have first-hand experience of this blowing out to two years. Improved decision making time frames should be imposed on agencies which may involve intervention from the CEO at an earlier stage of the continuum.

Prescribed Premises and Offensive Trade Licence

Piggeries are prescribed premises and as such require a works approval before construction and a license or registration to operate. An occupier must hold a works approval prior to commencing any work or construction that will cause the premises to become prescribed under Schedule 1 of the EP Regulations and prior to commencing any work or construction which may cause, increase, or alter emissions and discharges from an existing prescribed premise. Works approvals and licences are issued with conditions that apply to specific premises and are intended to prevent or minimise the emissions and discharges of waste to the environment.¹

Under the Health Act 1911 (WA) Schedule 2, piggeries are described as offensive trades and must be registered with the local government authority (LGA).²

Whilst accepting that pork production should be subject to some environmental regulation, the designation of piggeries as prescribed premises and an offensive trade is largely irrelevant in a rural area. It is incongruous to compare livestock production with tanneries, bone mills and tripe boiling establishments. It would be more appropriate to remove these designations in favour of scientific guidelines that are regularly reviewed.

The National Environmental Guidelines for Piggeries, Second Edition Revised 2010 (NEGP) and National Environmental Guidelines for Rotational Outdoor Piggeries (NEGROP) 2013 industry guidelines are based on up to date science and information, odour emission rate modelling, siting (topography, surface roughness), design (waste management system etc.), management (reuse etc.) and technologies ie covered pond systems. These guidelines are updated regularly based on new information and science and are the pre-eminent guidance document in other Australian states.

Approval for development would be much easier to understand and comply with if the NEGP was accepted in Western Australia as the principal document for environmental approval decisions. This could be overlaid with the State Planning Policy 2.5 when it is finalised.

¹ Department of Agriculture and Food; Noteworthy; Small Landholder Series; NW 65 | 2014 A guide to development approvals for small landholdings in Western Australia

² Western Australian Health Act 1911 - section 186

Risk Based Decision Making

A characteristic of environmental and planning decision making is an inflexible approach to applying guidelines rather than focussing on outcomes and assessment of risk. This can sometimes lead to excessive requirements for mitigation that are not relevant to the individual circumstances or refusal on the basis of intangibles like 'could' or 'might'. For example the draft State Planning Policy 2.5: Land Use Planning in Rural Areas Sub-clause (b) states that "animal premises that could limit existing or potential industrial land uses should not be located in State strategic industrial areas or generally within their buffers". The reference to decision making being based on an open ended and subjective "could limit existing or potential industrial land use" approach is not re-assuring to rural enterprises looking to expand or invest. Does this mean that an animal premise that at an individual level has no intention of operating in a manner that would limit industrial land use will not be approved simply because the industry as a whole in other circumstances could limit industrial land use?

A less prescriptive approach, a greater focus on outcomes and a risk based assessment which takes the avoidance or mitigation of risk into account would satisfy the dual purpose of protecting the environment at the same time as supporting development and innovation.

Recommendations:

1. The WA Government clearly separate responsibilities between various agencies and ensure there is consistency between each agency's requirements;
2. Planning and Environment decisions should be outcomes focussed and based on a risk assessment;
3. Consideration be given to imposing timeframes for decision-making that do not lead to gaming of the system by either party.
4. The State Planning Policy 2.5: Land Use Planning in Rural Areas and the National Environmental Guidelines for Piggeries, Second Edition Revised 2010 (NEGP) and National Environmental Guidelines for Rotational Outdoor Piggeries (NEGROP) 2013 industry guidelines should be endorsed as the principal sources for guidance in planning and environmental decision-making for piggeries
5. The designation of piggeries as 'offensive trades' and 'prescribed premises' be reviewed policies and allowed to operate under NEGP.

ACCESS TO LABOUR

Western Australia's need for skilled employees is continuing to grow, notwithstanding the mining downturn. The labour market profile is typified by an ageing population and it is estimated more than 400,000 additional employees will be required by 2017. The labour markets in the regions where the piggeries are located are characterised for the most part by high levels of efficiency and self-containment meaning there is a strong correlation between the workforce capacity and employment opportunity with little to no spare capacity. In areas where this is not case there is a high incidence of migration from the area and a lack of skills.

The inability to obtain skilled employees for piggeries is identified as a significant risk to the viability of pork producing operations and a threat to the industry's ability to meet local and international demand through expansion of operations.

Labour agreements have been utilised successfully in WA since 2011. Companies using labour agreements have augmented their migrant workforce with suitably qualified local employees. A key feature of their workforces is high retention at better than the industry standard. Employees recruited to WA provide a high level of skill in animal husbandry and are committed to living in WA. Employers are reporting that there has been a marked increase in lodgement fees to transition employees to permanent residency. Fees are now in the vicinity of \$12-16,000 for an average family. Employers are concerned that their investment in a loyal employee who contributes to the economy, particularly in the regions, and wants to remain in Australia, is at risk when application is made for permanent residency due to high costs.

Labour agreements can only be used to recruit Senior Stockpersons. Access to other classifications of employee must be obtained via the standard immigration process where candidates cannot be sourced locally. Navigating the system is difficult for individual farm employers and a specific review should be held to make this process easier and practical.

Whilst the assistance from individual officers with the Department of Immigration and Border Protection (DIBP) is a high standard, the extent to which they can help is hampered by caution about providing advice as opposed to information. Unless you have a direct relationship with a staff member, responses to telephone calls are provided using what appears to be a pre-prepared script and there is no scope to deviate from it. Similarly the system itself is, at times, interpreted in an overly prescriptive manner as the case study below illustrates. The DIBP website is also difficult to navigate and accessing meaningful information is not easy. It is noted that the DIBP is currently running a survey seeking feedback on making the site easier to use.

An allied issue relates to the rate of taxation for "backpackers". Pork producers use itinerant labour from time to time. Currently people on working holiday visas who are here for more than six months pay no tax until they reach the \$18,000 threshold. A change to be implemented from July 1 will mean these workers will pay 32.5¢ in tax for every dollar of income up to \$80,000. This is a strong disincentive for backpackers to work in the regions undertaking work that is difficult to satisfy with local labour. A compromise should be found to address this issue.

Recommendations:

6. The process for accessing skilled labour on migration visas outside the labour agreement process should be reviewed specifically with the intention of ensuring a simpler readily understood process and supporting information.
7. The DIBP website and telephone menu options should be reviewed with input from users to improve the relevance of the information and the options.
8. A compromise is adopted with regard to taxing employees on working holiday visas to ensure there is no unintended consequence for agriculture

Case Study 1

A producer who changed their business name/structure had to re-apply for their sponsorship status and re-nominate their visa holder as a consequence. The employer is concerned that the delay in processing will result in the visa holder being considered illegal and sent home as well as the potential for the employer to incur penalties. Nothing has changed except for the removal of a business partner from the ownership structure. The piggery, job role, pay and conditions remain the same. Queries directed to DIBP to clarify the situation are met with inflexible information that the sponsor must pass the Labour Market Test (i.e. advertise the position) as part of the nomination process to justify hiring an overseas worker notwithstanding the fact the worker is already meaningfully employed.

As for contacting DIPB re sponsorship queries, none of the menu options are obvious for this type of query. Opting for 'reporting suspicious activity' usually gets a response. One phone call was put on hold for 3 hours before being answered. For small businesses trying to produce livestock this is untenable.

AGRICULTURAL PHARMACEUTICALS

The current system of purchasing veterinary drugs effectively gives veterinarians a monopoly over the products and establishes a potential conflict of interest in terms of reinforcing a practice's bottom line compared to the interests of the animal. An improved system would be to separate 'prescribing' from 'dispensing'. Whilst a prescription would still be necessary a producer could source the product from a wholesaler of choice.

The delay and cost of getting veterinary drugs approved in Australia is another issue which affects producers. The Australian Pesticides and Veterinary Medicines Authority (AVPMA) insists on Australian data from Australian based trials when a product is being assessed. The quality of data from larger markets such as the US and the EU is robust and should be used for Australian assessment. The consequence of the current system is Australian producers do not get access to specific drugs due to the size of the Australian market and it is not economical to bring them here. Secondly, the drugs are registered for a specific condition and then it is prescribed off label for other purposes. If the cost of registering the products was reduced and data from countries with credible testing regimes was accepted, both these issues would be lessened.

Recommendations:

9. Consider separating 'prescribing' from 'dispensing' for veterinary drugs.
10. Review the cost structure for approving veterinary drugs
11. Review the AVPMA approach to data requirements for drug assessment

ANIMAL WELFARE

In Western Australia the Department of Agriculture and Food (DAFWA) and the Royal Society for the Prevention of Cruelty to Animals Western Australia (RSPCAWA) both enforce aspects of the Animal Welfare Act. DAFWA maintains a Livestock Compliance Unit (LCU) with appropriately trained officers who are able to respond to complaints of animal cruelty that are directly made to them. Under a

Memorandum of Understanding (MOU) RSPCA WA is the principal responder for all cruelty complaints in Western Australia. The dedicated 24/7 RSPCA WA call centre logs the complaints, which are then passed to an Inspector to investigate. RSPCA WA has the option to pass minor or moderate commercial livestock complaints (Level 1 or 2) to the LCU to investigate. Serious commercial livestock complaints (Level 3) may be passed to the LCU at the Society's discretion and with their approval. However, the need for this has not arisen in recent times.³

Pork producers support the role that the DAFWA LCU plays in ensuring compliance with the Animal Welfare Act insofar as production animals are concerned. DAFWA as a government organisation is in a far better position to enforce the laws and to provide education and advice on production animals given their agricultural experience. They have easy access to experts on livestock and can use existing networks to provide information to growers, transporters, exporters etc.

DAFWA officers must also comply with an enforcement policy and framework that is not subjected to the whim of changes in philosophy whereas the RSPCA whilst conforming to an agreed policy, has the opportunity to embark on specific political campaigns which may influence its enforcement approach. DAFWA officers also have access to training and in theory have high levels of accountability for their actions. Although the Ombudsman can investigate a general inspector employed by the RSPCA, the Ombudsman is unable to investigate a complaint against other RSPCA officers for example the In-house Counsel or the Prosecutions Panel who according to the RSPCA Prosecution Policy have a role in deciding if a prosecution proceeds.

Consistent with other comments in this submission it is important there are no blurred lines with responsibilities and accountability in regard to regulation. Animal welfare regulation and enforcement is no exception. To this end we believe that DAFWA is best placed to deal with complaints relating to production animals under the Animal Welfare Act.

It should be noted that a Parliamentary Standing Committee has inquired into the operations of the RSPCA WA and is yet to report.

WATER

To access surface or groundwater water for agricultural purposes a producer must have a Department of Water (DoW) licence. Licences are granted under two separate acts. Applications are assessed in accordance with the acts, policies and water allocation plans on a first in, first served basis. Existing license holders may enter into agreements with third parties to trade their water entitlements subject to approval by DoW.

A situation exists where landowners have licences for large volumes of water that they are not using, have never used and have no commercial business plan to use. This prevents producers with a genuine need and a sound business, from within the same area, expanding due to limited water availability. DoW should take a hard line on unused water allocations in order to support development.

Recommendation:

12. The DoW change its policy with regard to unused water allocations in order to support development

³ Royal Society for the Prevention of Cruelty to Animals Western Australia (Incorporated) Submission to the Legislative Council Select Committee into the Operations of RSPCA WA.

Case Study 2

If I want to expand our property I cannot because the farmer across the road has a 2GL water licence that has never used, although he did put in a centre pivot to show cause without the business case or ability to use the water. He has had the water for over 10 years and done nothing with it. He will not sell water to my company therefore we cannot expand that farm as we would not have water.

ACCESS TO AUSTRALIAN STANDARDS

It is a common requirement on licence conditions and in other areas of regulation such as occupational health and safety to ensure compliance with an Australian Standard. Access to standards incurs a cost which must be borne by the producer. This is not a one off cost as each time a report is made amendments must be purchased as well.

Given that Australian Standards have assumed such prominence as part of the regulatory environment they should be more cost effective to acquire.

Recommendation:

13. Australian Standards are made freely available.

CONCLUSION

One of the most negative effects of regulation on the pork production industry is the lack of clear lines of responsibility. Many agencies have a stake in the process which leads to confusion and complexity and bureaucrats guarding their patch. This absence of clarity exists between federal, state and local governments, statutory authorities and within government sectors.

Additionally decisions do not adequately measure likely risk and as a result are frequently based on worst case scenario. This can have the effect of rejecting developments that pose no risk but simply fail to tick all the boxes at the highest level.

Increased productivity in pork production will only come as a result of development and innovation. Both must be genuinely encouraged by policy makers through ensuring that regulation has a light touch on producers. Decisions should be made from the perspective of 'how can we make this happen' rather than 'how can we make sure it does not happen'.

RECOMMENDATIONS

1. The WA Government clearly separates responsibilities between various agencies and ensures there is consistency between each agency's requirements;
2. Planning and Environment decisions should be outcomes focussed and based on a risk assessment;
3. Consideration should be given to imposing timeframes for decision-making that do not lead to gaming of the system by either party;
4. The State Planning Policy 2.5: Land Use Planning in Rural Areas and the National Environmental Guidelines for Piggeries, Second Edition Revised 2010 (NEGP) and National Environmental Guidelines for Rotational Outdoor Piggeries (NEGROP) 2013 industry guidelines should be endorsed as the principal source for guidance in planning and environmental decision making for piggeries;
5. The designation of piggeries as 'offensive trades' and 'prescribed premises' should be reviewed;
6. The process for accessing skilled labour on migration visas outside the labour agreement process should be reviewed specifically with the intention of ensuring a simpler readily understood process and supporting information;
7. The DIBP website and telephone menu options are reviewed with input from users to improve the relevance of the information and the options;
8. A compromise is adopted with regard to taxing employees on working holiday visas to ensure there is no unintended consequence for agriculture;
9. Consider separating 'prescribing' from 'dispensing' for veterinary drugs;
10. Review the cost structure for approving veterinary drugs;
11. Review the AVPMA approach to data requirements for drug assessment;
12. The DoW change its policy with regard to unused water allocations in order to support development;
13. Australian Standards are made freely available.