



**Productivity Commission**  
**Draft Report on Regulation of Australian Agriculture**

**Response from the South Australian Government**

**September 2016**

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# Introduction

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The South Australian Government welcomes the opportunity to provide a response to the Productivity Commission Draft report on the Regulation of Australian Agriculture.

Agriculture is an important contributor to South Australia's economic wellbeing, with around \$18.2 billion in gross food and wine revenue in 2014/15<sup>1</sup> and employing nearly one in five South Australians.

One of the South Australian Government's 10 economic priorities is *Premium Food and Wine Produced in our Clean Environment and Exported to the World*.

Achieving the export and other targets under this objective is underpinned by robust regulatory frameworks associated with biosecurity, food safety, sustainable management of natural resources and our non-GM status which gives primary producers and food and wine manufacturers a competitive edge in the global marketplace.

Through this economic priority, South Australia is taking action to enable farm businesses to achieve prices commensurate with the State's reputation as a supplier of premium food and wine from our clean environment.

Reducing the regulatory burden on farm businesses is also an important pathway to increasing the competitiveness and productivity of Australian agriculture. This economic priority therefore includes simplifying and modernising regulatory arrangements to support innovation and job creation as one of its objectives and South Australia is making good progress to achieving this.

This response addresses a number of the draft findings and recommendations where there is a potential material impact on the competitiveness and productivity of farm businesses in South Australia. A number of examples are included where South Australia has already or is currently improving regulatory efficiency in line with the Productivity Commission's draft recommendations.

This response also expands on the South Australian Government's earlier submission to the Inquiry and provides further information on a number of the draft findings and recommendations where the analysis may not have fully considered the South Australian context.

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<sup>1</sup> Source: Food and Wine Score Card 2014-15 PIRSA

# Land Use Regulation

## DRAFT FINDING

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 2.1

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.

Pastoral leases managed under Pastoral Land Management and Conservation Act 1989 (the Pastoral Act) are the main form of land tenure in the semi-arid and arid region of South Australia. The ongoing administration of the Pastoral Act provides an important mechanism to ensure the pastoral zone of South Australia is well managed and while enabling a number of other land uses. South Australian pastoral lands are recognised nationally for being used in a sustainable manner.

There is no evidence to suggest that the system of pastoral lease tenure in South Australia limits open market transfers of pastoral leases compared with other forms of tenure. Pastoral lease terms are for a maximum of 42 years but there has been a number of examples in recent years where properties with less than 28 years remaining on their leases have been purchased at high market value.

The Pastoral Act does not limit access to pastoral leasehold land for mining, petroleum, conservation, tourism or defence purposes. The Pastoral Act has recently been amended to include provision for wind and solar facilities on properties under pastoral lease tenure. Division 4 Wind Farms of the Act details a clear and simple process for the establishment of wind farms on pastoral leases through a Ministerial grant of licence. Notification times for the resumption of land if required for solar facilities have been reduced from six months to two to ease the administrative process. There are at least three active proposals currently for the establishment of renewable energy facilities on pastoral leases in South Australia.

The Pastoral Board of South Australia has approved other land uses for pastoral leases, including cultural, tourism and conservation. Many pastoral lessees currently operate diversified small businesses such as tourism, using existing infrastructure or 4WD tracks and points of interest. No change of land use approval is required as they are classed as ancillary to the principle use of livestock grazing. It is difficult to identify any desirable land use change that could not be initially considered by the Pastoral Board, pursuant to Section 22(6)(c) of the Act.

## DRAFT FINDING

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.

## DRAFT RECOMMENDATION 2.2

State and territory governments should:

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

The Parliamentary Select Committee on the Crown lands (Miscellaneous) Amendment Bill 2002 recommended that Crown Perpetual leases under the now repealed Crown Lands Act 1929 be eligible for freehold subject to a conversion fee of \$2,000 or 20 times the rent, whichever was the greater. This low conversion fee was in recognition that leases were transferred between lessees for close to a freehold market value.

Most perpetual leases were freehold under this process. Rangelands Perpetual leases are currently not eligible for freehold under policy.

Grazing or Pastoral leases under the Crown Land Management Act 2009 are subject to a market value or the nominated value in the schedule of fees.

# Environmental Regulations

## DRAFT RECOMMENDATION 3.1

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

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

The *Native Vegetation Regulations 2003* are currently under review and draft regulations, the *Native Vegetation Regulations 2016* have been released for public comment. The draft regulations explicitly include reference to a risk assessment approach to be applied when considering application to clear native vegetation. This approach, along with online application capacity which is currently under development, will ensure low transaction costs and expediate processing time for applications that are likely to have a low impact on biodiversity. The risk assessment approach will consider both the size of the clearance and the presence of State or Nationally Threatened species or the presence of nationally threatened Ecological communities. This will ensure considerations are at an appropriate regional scale.

## DRAFT RECOMMENDATION 3.2

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

The Native Vegetation Act was amended in 2013 to include provisions for Third Party and Credit Significant Environmental Benefit (SEB) offsets. These provisions came into effect in December 2015, when supporting regulations, the Native Vegetation (Credit for environmental benefit) Regulations 2015, came into operation. Third Party and Credit SEB offsets allow for the trading in environmental benefits. This provides new opportunities for clearance proponents to offset their clearance activities and allows for the establishment of a market in environmental benefits. This will be supported by a Register that will be publically available. This will provide a means for landholders to generate an income from managing their native vegetation.

The Department for Environment, Water and Natural Resources has also supported and implemented a range of market based instruments in recent years to support the management and protection of native vegetation. This includes programs such as Woodland BushBids, which is a reverse auction in which landholders bid for funding based on the cost of managing their native vegetation. Another such program is Paddocks to Landscapes, implemented by South Australian Arid Land Natural Resources. Under this program, landholders are paid an opportunity cost in order to manage a portion of their land for conservation. The opportunity cost represents the loss of income from not using the land for pastoral purposes.

### 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.

The South Australian Government established the Better Together program in 2013 to support a culture of high-quality and effective stakeholder and community engagement. The Government is committed to embedding good engagement practice as an integral part of the way it operates and creating better decisions by bringing the voices of citizens and stakeholders into the issues that are relevant to them.

Landholder expertise is recognised and valued in environment and natural resource management and regulation in South Australia. For example, the Natural Resources Management Act 2004 specifies that the membership of the regional Natural Resource Management boards includes knowledge, skills and experience in primary production or pastoral land management. Additionally, the Native Vegetation Act 1991 specifies that the Native Vegetation Council includes a member nominated by Primary Producers SA. The Pastoral Land Management and Conservation Act 1989 also specifies that the Pastoral Board includes members with experience in the management of pastoral land, as well as members nominated by Livestock SA and Primary Producers SA.

Primary producers (state-wide peak bodies, local groups and individual landholders) are engaged and consulted in the review of environment and natural resource regulations. For example, the recent review of SEB offset policy and the current review of the Native Vegetation Regulations 2003 have both actively involved close consultation with primary producer groups throughout the review processes, as well as extensive public consultation. Feedback from Primary Producers SA regarding these processes has been positive.

The State Government (through DEWNR, regional NRM boards and PIRSA) works in partnership with Primary Producers SA to improve how the NRM system and the agriculture sector work together in SA. Working together to build strong relationships, understanding and communication has been a strong focus. The partnership continues to facilitate engagement and communication with landholders.

Relevant information regarding environment and natural resource regulation is available through DEWNR and NRM board websites and fact sheets provide comprehensive information to the public. Where relevant, this includes specific information for land holders, primary industries and sustainable agriculture. Additionally, information specific to primary producers and their interests has been developed and is available on the Primary Producers SA website. The PPSA website also provides links directly to the NRM boards' websites and to relevant DEWNR and PIRSA web pages for information on licencing, permits and approvals.

## **On-Farm Regulation of Water**

### **DRAFT FINDING**

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.

South Australia supports the Australian Government implementing the findings of the Interagency Working Group on Commonwealth Water Information Provision to reduce duplicative and unnecessary water management information requirements imposed on farm business.

## **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.

Under the Australian Constitution, the Commonwealth Government regulates animal welfare in trade (i.e. quarantine and live exports). All other animal welfare regulation is the responsibility of the jurisdictions. On this basis, the Commonwealth Government withdrew from leading and funding the Australian Animal Welfare Strategy (AAWS) including its leadership of the development of Australian animal welfare standards and guidelines. In 2006, it was agreed at Ministerial level that the standards and guidelines are based on science (where the science exists), are achievable and would be enforced consistently across Australia. There has been some variation in the level and type of regulation over the last decade but jurisdictions do, broadly, strive for consistency.

The development process has been endorsed by all stakeholders (animal industries, animal welfare scientists, regulators in all jurisdictions, the Australian Veterinary Association and the principal animal welfare organisations (RSPCA and Animals Australia). The process of welfare standard development is slow, due to basing the standards on scientific research, assessment of regulatory impacts and public consultation. The process would not be hastened by establishing a new independent body to undertake the work but would be assisted by the Commonwealth resuming its role in the coordination and hosting of the standards development process.



## 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.

In South Australia, there is a clear separation between agriculture policy matters for farm animal welfare and enforcement functions, with policy and regulatory requirements set by Government through Primary Industries and Regions SA (PIRSA) and the Department of Environment, Water and Natural Resources (DEWNR) and enforcement conducted by authorised RSPCA Inspectors and, to a lesser extent, the SA Police.

There is a transparent process for public reporting of animal welfare problems, either direct to RSPCA or through Government to RSPCA. Monitoring and enforcement of animal welfare compliance is conducted by the RSPCA, with significant SA Government funding, in accordance with a Funding Agreement between the Minister for Sustainability, Environment and Conservation and the RSPCA (SA) and Memorandum of Understanding between RSPCA, DEWNR and PIRSA).

The South Australian Government assists the RSPCA in its enforcement role by providing in excess of \$1 million per annum for this purpose. This is one of the highest levels of funding per capita in Australia. The South Australian Animal Welfare Act provides for routine inspections of animal facilities to monitor compliance with animal welfare legislation by specially trained and authorised RSPCA inspectors.

The Animal Welfare Regulations recognise that quality assurance (QA) schemes cover animal welfare matters and provides for independent (RSPCA) audits of QA schemes on-farm (currently for piggeries).

PIRSA is developing a new voluntary biosecurity scheme for livestock producers (One Biosecurity) that will also recognise the value of QA schemes in establishing appropriate animal welfare standards on farm.

# 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.

South Australia suggests that the premise of the findings are inaccurate and the underlying analysis supporting this recommendation is not applicable to South Australia.

The South Australian Government's moratorium on the commercial production of GM crops is in place to provide a marketing advantage globally and is not related to health or safety. It provides our agricultural producers and food businesses greater market access in countries where there is demand for premium products that are non-GM or made with non-GM ingredients. Coupled with our strong biosecurity and food safety reputation, our non-GM status is one of the elements which underpins our global reputation as a supplier of premium food and wine from our clean environment.

The draft report suggests that GM moratoria are having a net cost on the community. The South Australian Government does not agree with this statement and finds that the evidence presented in the report to support this finding is not applicable to South Australia.

The Productivity Commission draft report draws heavily on the Victorian DPI review of the Victorian GM Canola moratorium (pg 236-237 in full report). The most important assumptions made at the time of the 2007 cost-benefit analysis have shown in practice to be not applicable to South Australia. These assumptions include:

- The extent of the on-farm economic benefits (demonstrated by much lower than forecast uptake rate of GM varieties in regions where they are available),

- The level of price discounts for GM canola is assumed to be nil. In assessing overall economic impacts of GM moratoria, price discounts for GM crops directly offset any on-farm benefits. The Productivity Commission draft report includes examples of commodity GM canola discounts of \$50 and \$58 a tonne, which is consistent with the price discount seen across NSW, Victoria and WA in early 2016.
- The costs of segregation and the proportion of industry that pays that cost, and
- The extent of the benefits to the economy of technology access costs (higher GM seed costs and GM variety royalties).

Perhaps most importantly, the Commission has discounted the broader benefits of South Australia's GM crop moratorium, with existing benefits and growing market opportunities in marketing South Australia's non-GM status which is available to the whole agricultural and food sector.

South Australia is committed to maintain the moratorium on the commercial production of GM food crops until at least September 2019.

#### 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.

Recognising that Australia is not a top priority market for agvet chemicals from a global perspective, APVMA should make its processes as attractive as possible to encourage involvement in the Australian market.

#### 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.

States and Territories use a variety of legal mechanisms to both allow and limit off-label use, influenced by their legal approach to risk management, the availability or not of pest and disease control options and the practicalities of cost efficient effective regulation.

Currently, there is recognition of the need for a degree of flexibility in managing off-label use risks at State and Territory level. Additional harmonization beyond what has already been agreed is unlikely to be supported if it reduces access to necessary chemicals and or increases costs to South Australian producers.

# Transport

## DRAFT FINDING

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.

## 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 8.3

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.

Policy makers must understand the wider industry, state and national benefits of transport productivity improvements within the agricultural sector. Policy and regulation development must keep pace with the technological improvements in heavy vehicle and agricultural machinery design and manufacture.

The outcomes of the South Australian 90 Day project “A modern transport system for agriculture” are resulting in significant productivity improvements for the agricultural sector of South Australia. This includes improvements in vehicle productivity and improved access for heavy vehicles and agricultural machinery.

Through collaboration across government and industry, significant improvements have been made in South Australia in recent times including:

- Introduction of tri-axle dollies for use in all Road Train combinations – up to 6.5% increase in vehicle productivity
- Introduction of Quad (BAB) Road Trains onto the 53.5m network in South Australia – a 9.8% increase in vehicle productivity. Also, time saving in using a more flexible vehicle combination
- Improving access from 26m B Double to 36.5m Road Train from major Viterra regional grain handling site (Roseworthy) through to Port Adelaide – up to 30% increase in vehicle productivity

Industry have estimated the value of recent improvements, to date, to be at least \$36 million. As projects involving infrastructure upgrades come ‘on-line’ this benefit will increase.

# Food Regulation

## DRAFT RECOMMENDATION 9.1

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

South Australia automatically adopts the Food Standards Code via the Food Act 2001.

The Food Standards Code is routinely reviewed and updated in accordance with industry practices and consumer concerns. Genetically modified foods are pre-assessed for safety prior to entry onto the market. Foods containing novel DNA or protein are required to be labelled to which provides the consumer benefit of choice when purchasing foods. This is based on the objective under the Food Standards Australia New Zealand Act 1991, of providing adequate information in relation to food to enable consumers to make informed choices.

## 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'.

The Foods Standards Code is reviewed regularly against international standards but must take into account Australian and New Zealand consumption and dietary patterns and allergic sub-population when considering appropriate allergen labelling. In developing labelling standards, the main objective of Food Standards Australia New Zealand, is the protection of public health and safety.

In line with the public health and safety outcomes, a FSANZ review of gluten free standards and labelling would be supported, to expand the potential market opportunities for South Australian agricultural and food industries.