



Tasmanian Farmers and Graziers Association

Submission to the: Regulation of Australian Agriculture Draft Report

Productivity Commission

August, 2016



The Tasmanian Farmers & Graziers Association (TFGA) is the leading representative body for Tasmanian primary producers. TFGA members are responsible for generating approximately 80% of the value created by the Tasmanian agricultural sector.

Agriculture is one of the key pillars of the economy and, with the current level of support from government, are well positioned to further capitalise on the stature of Tasmania agriculture.

The Australian Bureau of Statistics estimates that Tasmania's Gross State Product for 2014-15 was \$25.42 billion. Agriculture, forestry and fishing in 2014-15 was Tasmania's largest industry representing 9.6% (\$2.29B) of Tasmania's total gross value added.¹

COMMENTS TO THE REGULATION OF AUSTRALIAN AGRICULTURE DRAFT REPORT

TFGA understand and agree with the Productivity Commission (PC) comment that; *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'.* TFGA see this draft report as an opportunity to raise regulatory issues occurring within our sector and to consider and develop appropriate solutions to enable our members to undertake sustainable farming businesses now and into the future.

Furthermore, we agree with the PC comment that; *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.* TFGA believe by using other non-regulatory incentives we can obtain more productive outcomes than the ongoing reliance on regulatory control as the preferred methodology in obtaining compliance. Examples include market or industry driven incentives like quality assurance programs or industry code of practices.

SECTION 2 LAND USE

Information request

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?

In Tasmania we have the *Primary Industry Activities Protection Act 1995*. The Act protects persons engaged in primary industry by limiting the operations of the common law of nuisance in respect of certain activities that are incidental to efficient and commercially viable primary production. It is the only 'right to farm' legislation in Australia, and is similar to legislation in the USA in that it extinguishes the common law right to claim nuisance in certain circumstances.

TFGA is supportive of the intent of the Act, however there are improvements that need to occur in conjunction with the current Tasmanian planning scheme reform process.

Conflict situations usually arise through lack of understanding of the different needs of various land users. This is reflected in planning decisions that have alienated agricultural buffer zones and approved rural residential subdivisions in the midst of productive farming operations.

Tasmania is going through a state-wide planning reform process where we are supportive of agriculture being recognised in the planning process as a legitimate land use in its own right.

¹ Tasmanian Government, State Accounts (ABS Cat No 5220.0).

In our view, the Act can be improved. The key issue with the Act is that it is subservient to most other legislative and regulatory tools and is essentially a tool of last resort.

This has meant that it is rarely able to be successfully used by farmers, as other legislation has already been applied and hence impacted on operational viability. This demonstrates that good regulation can benefit everyone, while substandard regulation doesn't.

Tasmania has the opportunity to get it right where we can improve our 'right to farm' legislation and have an overarching state-wide planning scheme that recognises agriculture as a legitimate land use.

SECTION 3 ENVIRONMENT

Farmers have responsibilities to manage natural resources and the environment in their care. They also have a vested interest in maintaining their land, vegetation and water in order to be viable in the future. Farmers are also significant land managers in the state, with almost a third of Tasmania's land area of 68,300 sq km committed to agriculture.

Community expectations are changing and becoming inappropriate in terms of placing high expectations on how the environment should be managed on private land. Tasmanian farmers bear a disproportionate share of the cost of protecting and maintaining the natural environment. Too often, they are expected to undertake conservation measures that carry with them considerable costs but where the benefit is to the wider community.

Put simply, if the public wants protection of natural and landscape values, or protection, conservation and management of significant areas the farmer shouldn't be penalised where part of their property is under reserve or 'locked-up'.

There needs to be a government guarantee that appropriate compensation is available where a planning decision impinges on the rights of the farmer to carry out his or her legitimate business.

From a state perspective, as explained in the Forest Practices Authority factsheet, 'Information on land clearing controls in Tasmania', clearing of forest is permitted where authorised under a forest practices plan or where an exemption is provided under the regulations. Clearing is not permitted in some circumstances, even with a forest practices plan.

Compensation may be payable to affected landowners who are prevented from clearing threatened native vegetation. The *Nature Conservation Act 2002* sets out the processes and criteria for compensation. Under Section 41 it provides guidance to the Minister regarding the timing to provide a decision to the affected landowner whether compensation is to be paid or not.

41. Affected owner entitled to apply for compensation

(1) A landowner may apply to the Minister for compensation for any financial loss suffered by that landowner as a result of becoming an affected owner.

(2) An application for compensation is to be made in writing to the Minister within 180 days of the day on which the landowner became an affected owner.

(3) As soon as practicable after receiving an application for compensation, the Minister must, subject to section 41A, notify the affected owner that the application is –

- (a) accepted; or
- (b) refused.

Under this Act it isn't specific in providing a guarantee to the affected landowner on how long the Minister will take to make up his or her mind. TFGA has had members waiting in excess of 2 years before they found out if they were to get compensation or not.

Federally, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) under Section 519 - Compensation for acquisition of property, it provides some guidance to landowners if they will be provided compensation on the basis that the Federal Government will be acquiring property from them to protect matters of national environmental significance.

EPBC Act Section 519; When compensation is necessary

(1) If, apart from this section, the operation of this Act would result in an acquisition of property from a person that would be invalid because of paragraph 51(xxxi) of the Constitution (which deals with acquisition of property on just terms) the Commonwealth must pay the person a reasonable amount of compensation.

Definition

(2) In this Act:

"acquisition of property" has the same meaning as in paragraph 51(xxxi) of the Constitution.

Court can decide amount of compensation

(3) If the Commonwealth and the person do not agree on the amount of compensation to be paid, the person may apply to the Federal Court for the recovery from the Commonwealth of a reasonable amount of compensation fixed by the Court.

Other compensation to be taken into account

(4) In assessing compensation payable by the Commonwealth, the Court must take into account any other compensation or remedy arising out of the same event or situation.

From a farmer's perspective if they have a matter that is of national environmental significance on their property, they may be entitled to compensation based on the Constitution's wording "on just terms". However, even though acquisition of property may have taken place there is no guarantee to how long a decision will take regarding reasonable compensation.

Put simply if the community wishes to protect environmental attributes, then the community must pay – and that means the government has to fund such activities.

Comment to Draft Recommendation 3.1:

TFGA recommends that government consultation should also include farming organisations, as farmers are managing almost a third of the state's land area. The ongoing effectiveness of environmental regulation will only be guaranteed by ensuring that key stakeholders, like farming organisations, have confidence in the process and are committed to the public policy objectives. A key part of this is through appropriate government consultation.

SECTION 4 ON-FARM REGULATION OF WATER

There is no doubt 2015/16 has been an extreme season for farmers, from drought to floods; little rain to too much rain. Until the rains came in June 2016 Tasmania was very dry; our dam storages were at extreme low levels; the bass-link cable was damaged; and the government had to bring in diesel generators to provide power to the State.

These circumstances have acted as a catalyst to bring into clear focus deficiencies within the current water management regime within Tasmania.

We currently have Hydro, Tasmanian Irrigation, TasWater and the Water Management Branch within the Department of Primary Industries, Parks, Water and Environment (DPIPWE). All have varying degrees of management in relation to our water resources. The TFGA believe the current model is not sustainable and is inefficient and counterproductive to the sector.

As per the Productivity Commission's finding under 4.1, '*Complexity and ongoing changes in water regulation contribute to the cumulative burden of regulation of farm businesses*'. This is the case in Tasmania and improving our water management regime will remove unnecessary regulation for our farmers.

A more inclusive and flexible approach needs to be developed in Tasmania to assist the agriculture sector in continuing being a key economic pillar in the State.

SECTION 5 REGULATION OF FARM ANIMAL WELFARE

The TFGA would like it to be recognised that every year Australian farmers spend millions of dollars, on-farm, ensuring the welfare of their animals. Millions more are also invested through compulsory levies on animal welfare research, development and extension.

The Regulation of Australian Agriculture Productivity Commission Draft Report puts forward models that either already exist in the states or territories in one form or another, or the revival of the now defunct system, the Australian Animal Welfare Advisory Committee (AWAC).

As an example of a pre-existing model, the Tasmanian Animal Welfare Advisory Committee which is a legislated body under Tasmanian law (Animal Welfare Act 1993) acts as an advisory committee to the Minister for Primary Industries, and the replication of which is the recommendation put forward by the TFGA should a body be formed on a national scale.

See below excerpt from the Tasmanian Animal Welfare Act detailing its membership and functions.

PART 6 - Animal Welfare Advisory Committee

39. Membership of Advisory Committee

(1) There is established an Animal Welfare Advisory Committee consisting of –

(a) a person appointed as chairperson of the Advisory Committee; and

(b) a person nominated by the Secretary of the responsible Department in relation to the Animal Welfare Act 1993; and

(c) a person nominated by the Secretary of the responsible Department in relation to the Nature Conservation Act 2002; and

(d) a person nominated by the Secretary of the responsible Department in relation to the Police Service Act 2003; and

(da) a person nominated by the Secretary of the responsible Department in relation to the Racing Regulation Act 2004; and

(e) a person nominated by the Municipal Association of Tasmania; and

(f) a person nominated by the University of Tasmania; and

(g) a person to represent the sporting and recreational users of animals; and

(h) a person to represent the intensive animal industry including the pig and poultry industries; and

(i) a person nominated by the Tasmanian Farmers and Graziers Association to represent the grazing animal industry; and

(j) a person nominated by the Royal Society for the Prevention of Cruelty to Animals; and

(k) a registered veterinary surgeon nominated by the Australian Veterinary Association; and

(l) a person nominated by Animals Australia Incorporated; and

(m) such other persons as the Minister considers appropriate.

(2) The members are appointed by the Minister.

(3) A member of the Advisory Committee may, with the approval of the Minister, appoint a person nominated by the organization which the member represents as his or her deputy.

(3A) The Secretary of a responsible Department referred to in paragraph, (c) or (d) of subsection (1) may, with the approval of the Minister, appoint a person as a deputy to the person nominated in paragraph, (c) or (d) of subsection (1).

(4) If a nomination under subsection (1) is not made within 30 days after the date on which that nomination is required by the Minister to be made, the Minister may appoint suitably qualified persons for appointment under that subsection.

(5) If a body referred to in paragraph (e), (i), (j), (k) or (l) of subsection (1) changes its name, the Minister may, by order, amend that paragraph by substituting the body's new name.

(6) If a body referred to in paragraph (e), (i), (j), (k) or (l) of subsection (1) ceases to exist, the Minister, on the recommendation of the Advisory Committee, may, by order, amend that paragraph by substituting the name of a body which the Minister is satisfied substantially represents the interests represented by the first-mentioned body.

(7) Schedule 1 has effect with respect to members of the Advisory Committee.

(8) Schedule 2 has effect with respect to meetings of the Advisory Committee.

40. Functions of Advisory Committee

(1) The Advisory Committee has the following functions:

(a) to advise the Minister on any matter generally relating to animal welfare;

(b) to advise the Minister on any specific matter relating to animal welfare as requested by the Minister;

(c) to conduct an ongoing review of the laws relating to animal welfare;

(d) to recommend to the Minister any changes in the laws relating to animal welfare;

(e) to make recommendations on any matter of concern to the Advisory Committee;

(f) to identify areas which require development of public education strategies relating to animal welfare;

(g) to develop educational programmes relating to animal welfare;

(h) to make recommendations to the Minister on any matter relating to animal welfare standards or animal welfare guidelines;

(ha) any other functions imposed by this Act;

(i) any other functions the Minister may determine.

(2) In carrying out its functions, the Advisory Committee is to take into account –

(a) the community concerns about, and attitudes towards, animal welfare; and

(b) the needs of affected industries; and

(c) the changes in, and availability of, animal management practices.

Responsibility of Animal Welfare:

The TFGA can see the benefit of having overarching Standards and Guidelines to benchmark welfare issues, to detail the allowable standard for animal welfare across Australia.

It is important to the TFGA and its members that any resolution from this report be simple and concise. It is important that Standards and Guidelines be guided entirely by scientific research and evidence based best practice.

The TFGA advocates for consistent principles of animal welfare in Australia, with the development of an AWAC style committee to update the Standards and Guidelines, as and when required.

Community Expectation:

Across Australia we are seeing a greater divide between the rural landscape and metropolitan consumers, as the understanding of conventional agricultural practices has diminished, and a connection to the reality of agricultural production. While community expectations can, and should be considered when forming policy, they should not be allowed to dictate welfare standards.

The TFGA advocates for science based policy development in the animal welfare sector.

Funding:

The TFGA would not like to see the funding of existing animal welfare bodies (eg. Animal Health Australia and rural research development corporations) be reduced, and sees that they have a continuing role in the continuous improvement of animal welfare in Australia. Under the TFGA proposed model, continued funding of welfare bodies should be maintained as a matter of industry betterment and moral standing. Every dollar spent on animal welfare is a dollar spent on promoting the Australian livestock industry to the international market place.

The TFGA implores both state and federal governments to continue, and where possible increase funding for the improvement of animal welfare, through such means as research or development.

SECTION 6 REGULATION OF TECHNOLOGIES AND AGRICULTURAL & VETERINARY CHEMICALS

Moratorium on Genetically Modified Organisms:

The TFGA as a matter of policy will support a continuation of the current moratorium on the use of genetically modified organisms (GMOs) in Tasmania. It needs to be pointed out that a moratorium by definition is a temporary prohibition on an activity, not a ban.

The moratorium presents the agriculture sector with a number of key challenges and opportunities. Within the sector, there are producers who consider the moratorium as a marketing advantage. Others are concerned that the industry is losing productivity and competitiveness due to the inability to access GMO technologies that arguably could enhance current production outcomes and methodologies. The Tasmanian Minister for Primary Industries under the regulations retains the right to review for the use of GMO's in Tasmania.

Public perception can be used by Brand Tasmania as a marketing tool; the preservation of a clean green image is paramount to multiple sectors in the Tasmania economy including the agricultural sector. It is unclear how public perception may change on Tasmania's clean green image should the moratorium be lifted, caution and consideration will be advised should a change be made.

The TFGA supports the work of the Office of the Gene Technology Regulator and has no moral or scientific objection to the technology. The TFGA however take issue with the recommendation that the right of the state to regulate on this matter is removed, the TFGA sees this is a matter of economic potential, though does accept that greater benefit could be seen with improved communication with consumers and customers.

The TFGA does not support the recommendation to the repeal the power of the state to legislate on the issue of GMO's.

Making greater use of international evidence in pesticides and veterinary medicines:

The TFGA in principle supports the recommendation that the APVMA should make greater use of trusted internationally produced evidence with regards to pesticides and veterinary medicines. This support is prefaced by the fact that this information from trusted sources should not be wholly used to make a final assessment, but rather as a supporting factor in the completion of an assessment. Any question with regards to the rigour of an Australian assessment of pesticides or veterinary medicines could potentially harm our trade in agricultural produce.

The TFGA supports the recommendation for making greater use of international evidence in pesticides and veterinary medicines from trusted sources as a matter of efficacy.

SECTION 7 BIOSECURITY

Firstly, the majority of people don't break the law. However, there are a few that they think they are either above the law or they are doing the right thing and the law doesn't apply to them. The rule of law says it is for the appropriate authorities to determine whether crimes, felonies or misdemeanours have been committed, not self-appointed vigilante activists committing trespass and trampling on the rights of people who might well be completely innocent.

Secondly, farm trespass in terms of biosecurity has huge consequences for farm businesses when those entering the farm have in avertedly spread pests and diseases.

The Tasmanian Government through its Department of Primary Industries has officers who undertake audits of farms across the state, in particular concentrating on intensive farming operations. As detailed in the DPIPWE Annual Report 2015² it states that a proportion of farming businesses were inspected, of those considered high risk, no significant non-compliance issues were detected.

This shows that the State Government is undertaking appropriate measures to inspect farm compliance with animal welfare standards; farmers are complying with the standards for good animal welfare; and importantly, this information should demonstrate to those who believe they need to take the law into their own hands, our farmers are doing the right thing and the welfare of their animals is their priority.

SECTION 8 TRANSPORT

Comments to Draft Recommendation 8.3 and 8.4:

² Annual Report of the Department of Primary Industries, Parks, Water and Environment, 30 June 2015, Tasmanian Government.

The PC draft recommendation is very practical and should be implemented by the National Heavy Vehicle Regulator when issuing permits for oversized agricultural machinery that are valid for longer periods and/or for multiple journeys.

TFGA is very supportive of longer permits that can be used for multiple journeys to increase efficiencies for the NHVR and farmers.

Oversized agricultural machinery (eg. harvesters, tractors) require a permit to travel on a public road, if it exceeds the limits permitted when operating under a notice or the code of practice. The issuing of permits is dependent of the Road Manager, who assess applications on a case-by-case basis. Our members believe the operation of the permit system under the HVNL can be improved to be a more streamlined permit approval process to reduce time getting a permit, especially during busy periods like harvest.

TFGA agree and support the review of the NHVR.

Comment to Draft Recommendation 8.5:

The TFGA is supportive of amending the coastal shipping laws. We agree with the PC that increased competition in coastal shipping will be beneficial for our farmers, and could reduce the extent to which producers rely on the TFES to be competitive.

The TFGA agree that reforms will allow greater competition from foreign vessels in coastal waters that will open up access for farmers and industry to access more cost effective shipping services.

SECTION 12 FOREIGN INVESTMENT IN AGRICULTURE

Any attempt to limit foreign investment must not impact on farmers. They must retain the right to sell their assets to the highest bidder – regardless of nationality.

The TFGAs position on foreign investment is:

- We support the amendments to the Foreign Acquisitions and Takeovers Act 1975 where the safeguards enacted by the amendments, including the \$15 million cumulative screening threshold for agricultural land and \$55 million for agribusiness, will help to ensure that due consideration is given to foreign ownership coming into the sector;
- We support the establishment of the Agricultural Land and Water Register, which requires foreign investors to register their land and water purchases. Collecting this data will aid policy development with regards to foreign investment into the sector by presenting a facts based picture of the investment ownership landscape. Additionally, such a register will assist in addressing community concerns around investment in Australian agriculture, where misconception is commonplace; and
- We support a cost recovery model for application fees for foreign investment proposals.