



Advancing Australian Cotton

Productivity Commission Regulation of Agriculture - Issues Paper

Cotton Australia final submission, February 19 2015

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Introduction

Cotton Australia (CA) is the key representative body for Australia's cotton growing industry. The cotton industry is an integral part of the Australian economy, worth over \$1.25 billion in export earnings in the 2014–15 season, and employing on average 10,000 people. The industry's vision is: Australian cotton, carefully grown, naturally world's best.

Cotton Australia is pleased to see the government issue the Productivity Commission's public inquiry into Regulation of Agriculture (Issues Paper) and we welcome the opportunity to make a submission. We support the Government's drive to repeal unnecessary and redundant regulation, but believe more need to be done.

Our submission has focused primarily on regulation on-farm, however we have considered the supply chain. In developing the submission, we have consulted with many of our affiliate industry bodies including the National Farmers' Federation, QLD Farmers' Federation and NSW Irrigators' Council (of which we are members). We have also sought input from our member base, the Australian Cotton Shippers' Association and other key industry contacts e.g. large rural-based businesses.

We wish to highlight the fact that since at least 2007, there have been a number of significant exercises undertaken which have sought to define and address the 'red tape' on agriculture and small business. Cotton Australia has engaged with many of these on behalf of our members. We therefore expect that this Inquiry will drive substantial and meaningful change through government to better position agriculture and lessen the 'red tape' burden.

Cotton farm businesses in Australia – like most across agriculture – already function in a complex, challenging operating environment. It is well known that agriculture in Australia is:

- A risky business
- Experiencing declining terms of trade
- Experiencing lagging productivity gains, in context of the emergence of major new competition (e.g. South America) in global agricultural markets over the past decade, and in the context of increasing input prices. In addition, globally cotton is facing increased competition from man-made fibres, which have caused cotton's market share to decline
- Receives minimum government support, competing against heavily subsidized countries

The cotton industry is not immune from any of these challenges. Despite these and increasing operating costs, the average price received over the last 20 years has certainly not risen to match, remaining relatively stagnant. However, typical of Australian agricultural industries, we have a world class production system and product. The

Australian cotton industry is supported by a highly capable R&D system and research institutions, an excellent story and environmental credentials to sell as well as a product sought after by the market. It is therefore critical that all regulation be effective and efficient and where possible provide a supportive framework for businesses so that they can optimize their businesses, productivity and value. The extra pressure of regulatory burden can inhibit investment, growth and innovation.

Regulation in agriculture - general comments

As acknowledged in the Issues Paper, *“improving the efficiency and effectiveness 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”*. This is particularly pertinent for cotton which is nearly 100% exported. In addition, we strongly agree with the Productivity Commission’s observation that *‘regulatory burdens can have a significant and disproportionate impact on small businesses’* given the fact that they have narrow margins *‘over which to spread what are frequently fixed compliance costs’*. Many agricultural businesses are small businesses and this characteristic definitely contributes to the regulatory burden experienced.

We know regulatory burden for Australian agricultural businesses is high. It is an issue commonly raised by our members and across the sector. The previous 2007 Review on business red tape burden, countless submissions, independent studies, and the more recent work completed by the National Farmers’ Federation on red tape in agriculture in 2014 all point to this. Cotton Australia, with the NFF, commissioned a report in 2014 to quantify the regulatory burden imposed on farmers. Holmes and Sackett analyzed the financial, taxation and compliance costs associated with a sample of farm operations and found the cost to be between \$24,000 and \$43,000 per year, depending on the type of business farmers are operating. Farmers spend a total of 20.6 days consumed in tasks associated with red tape, which equates to 8.6% of the working year. In total, for the average farm, red tape equated to:

- 3.9% of income
- 4.5% of total expenses
- 13.9% of net farm profit

The complexity of legislative regulation in relation to on farm activities is demonstrated in the fact that landholders require guides and information materials in order to navigate the various levels of local / state and Federal legislation that applies. There are countless examples of this developed by government and industry. For example the Queensland Farmers Federation developed a guide for landholders – *Environmental Management and Planning Legislation – A guide for Queensland Rural Landholders (Version 2, 2015)* which details applicable pieces of Local / State and Federal legislation that applies to agricultural production. The Guide clarifies legislation that applies where:

- Vegetation is cleared for the purpose of high-value agriculture
- Managing pests, plants and animals
- Land use is shifted from agriculture to another land use i.e. broadacres cropping or introduces additional activities i.e. the development of tourism accommodation.

Similarly, industry developed systems such as ‘best management practices’ programs are similar examples of approaches that aim to help land managers understand and address legislative requirements, and beyond. The Australian cotton industry has maintained such a program – myBMP – for many years. Similar programs also exist in the sugar and grains industries and are being explored by a number of others. Under the cotton myBMP program, there are eleven modules that cover all farm production areas, including HR and WHS. The vast (i.e. hundreds) number of legal compliance ‘practices’ that exist across all modules highlights the level of regulation that need to be addressed by growers.

Through updates to the cotton myBMP, growers can keep up to date with legislative obligations that may be otherwise difficult to track and trace. Other BMP programs have incorporated a similar legislative compliance approaches that can be used by farmers as a quick ready reckoner of compliance with legislative red tape. Cotton Australia considers that regulators should make the effort to understand such industry developed programs. In some situations, they could be considered as a means of achieving compliance outcomes that work for both parties. For example, in the past, QLD government has held an MOU with industry to recognise such farm management systems-based approaches (including cotton’s Land and Water BMP module), which have supported the adoption of voluntary property planning approaches instead of a strong regulatory approach.

Given the layers of regulation that apply to agricultural businesses and the fact that they all vary in their operations, size and situations, it can be challenging to identify discrete examples of red tape burden and the material impact. As identified in the NFF’s 2014 Red Tape report, the cumulative impact of meeting regulatory obligations for farm businesses is high.

Cotton Australia contends that most regulations are well intentioned and are not purposely designed to stifle business and incur unnecessary costs. They can be highly important and benefit the sector and broader community. However, unfortunately, that is often the case. The regulation that is applied to deal with a genuine issue is often over-the-top, in part due to the risk adverse nature of the bureaucratic drafters.

From this stand-point Cotton Australia finds it hard to identify regulations that serve no purpose at all, but can find plenty of examples where the regulatory burden is disproportionate to the risk involved.

As stated by the PC issues paper, “*where excessive or unnecessarily burdensome, it (regulation) can raise costs to businesses, users and consumers, which in turn can reduce economic activity, inhibit trade or restrict competition*” and this is certainly the reality for agricultural businesses in a number of cases and great threat to the sector more broadly in terms of growth and meeting its true potential.

Therefore, while Cotton Australia welcomes this Inquiry, it believes the only real solution is for all branches of Government, with full consultation with industry and business, to undertake a “root and branch” review of all regulation.

Such a process, which would have to be timetabled over a number of years, would have to challenge the purpose of each regulation, and its efficiency for both government and business.

Australia believes the need for such a wide approach would be clearly demonstrated if the Productivity Commission, as part of this Inquiry, engaged consultants to undertake a forensic examination of the impact of regulation of 10 farm businesses across Australia. Cotton Australia is confident that such an approach would clearly identify many examples where the issue being regulated, does not justify the degree of regulation applied, or the costs imposed by such regulation.

General recommendations

- 1. That a “root and branch” review of all regulation be undertaken**
- 2. That the Productivity Commission, as part of this Inquiry, undertake detailed examinations of the impact of regulation of 10 farm businesses across Australia.**
- 3. Before taking a regulatory approach, government should consult early with industry on issues and potential solutions. This could result in a more effective and appropriate approach for both parties.**
- 4. Government should consider introducing an agricultural impact statement for new regulations which tests the benefits of regulation in terms of improvements to sustainability and profitability of Australian agriculture.**

Specific comments

Land tenure and use

Land use planning

Cotton Australia's interaction with land use planning, development assessment and approval processes has largely arisen as a result of the interaction between agricultural and resources industries. As such the information that we have presented in our submission to the Productivity Commission aims to provide the Commissioner with some of the challenges our industry has faced in relation to:

- development on farm; and
- grant of development approvals that will impact directly on the property rights of our growers.

To ensure that both aspects are addressed for the PC review we have split our response in the two sections related to a) grower developments on farm and b) the grant of development approvals that impact on grower property rights.

Grower development on farm

Cotton Australia's members are distributed predominantly across NSW and Queensland. The major State based legislation is the Environmental Planning and Assessment (EP&A) Act 1979 in NSW and the Regional Planning Interests Act 2014 in Qld.

These State based Acts provide the framework for the location and regulation of land use including specification of land use zoning that indicates where particular activities may occur according to regional strategies or policies. An additional layer of development approval may apply through locally based (Council / Shire) planning and consent instruments.

A direct example of where these levels of regulations impact on our growers has been experienced in relation to local government building regulations. Increasingly Local Government appear to be try to apply the same level of scrutiny to buildings and developments on farms as they do to building and developments in urban areas. Cotton Australia is aware of one instance when a planning approval for a farm shed was held up for weeks, because the application did not deal with how the spoil from the footing excavations would be disposed. This needs to be seen in context that the total spoil amounted to two truck-loads, and the work was being conducted on a 40,000ha farm, offering plenty of opportunity for sensitive disposal of generated material.

A further example of the regulation or 'red tape' that may apply to a grower in relation to development approvals is illustrated in building a dam or water storage. The process (taking NSW as an example) involves a number of steps and considerations including:

- Obtaining advice from the NSW Department of Primary Industries – Water (NSW DPI Water) regarding the size of a dam that is permitted without a requirement for a licence. This is not based on volume alone but also additional rule exemptions.
- Dams are not permitted on larger streams but only minor watercourses, unless approved by NSW DPI Water
- Dams may have a requirement for fish water passage under the *Fisheries Management Act 1994* along certain watercourses
- Removal of vegetation in riparian zones (within 20m of a stream) for the construction of a dam is not permitted under the *Native Vegetation Management Act 2003*. Where trees are required to be removed for dam construction this may require a special permit or Property Vegetation Plan; and
- Local councils can require a development application for every dam built

The different pieces of legislation that are required to be met in order to construct a dam highlights the barriers that are confronted by NSW growers.

In Queensland our growers face similar challenges with the construction of a dam being subject to a development permit under the *Sustainable Planning Act 2009*, where a dam is deemed as referable¹. The development application is to be accompanied by an approved Failure Impact Assessment (FIA) and any water entitlements / licences required under the *Water Act 2000*.

While we support the legislation in place, the number of Departments that require consultation can lead to significant delays. As highlighted in the above, the rules that apply often have exemptions in place that create a requirement to consult Government Departments in order to determine whether these can apply to a growers individual operation / circumstance.

Despite creating additional process, CA doesn't suggest these 'rule exemptions' be removed as they provide opportunities for growers to make the most of their land and water resources. It also recognises that agricultural operations do not fit within a 'one size fits all' framework, and that individual circumstances may need to be considered as part of the

¹ A dam is classed to be referable where a dam is:

- More than 8m in height, and has a storage capacity of more than 500 megalitres; OR
- More than 8m in height, and has a storage capacity of more than 250 megalitres, and a catchment area that is more than three times its maximum surface area at full supply level; OR
- Work that will increase the storage capacity of a referable dam by more than 10 per cent.

NB – If a dam is not currently a referable dam it does not mean that it may not become a referable dam at some time in the future if development occurs downstream.

approval process. In order to 'combat' or manage significant delays that can occur through the system, CA supports the introduction of timeframes for approvals processes. Timeframes around decision making have been introduced in other industry / development approval processes, for example the IESC (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) must deliver advice to the Minister in 60 days of receiving a referral. We believe that a similar system could apply throughout agricultural regulatory processes.

Recommendations

- 1. CA supports timeframes for delivery of Departmental advice for approvals processes and suggests governments consider introducing these where they don't already exist**
- 2. CA supports continued consideration of individual circumstances in development approval processes**
- 3. Improve the scrutiny around how new planning (legislation) requirements are introduced**

Grant of development approvals that impact on grower property rights

Cotton Australia has engaged in discussions related to development assessment and approval processes largely as a result of the impacts of extractive industries on our members. Increasing encroachment of extractive industries on agricultural lands has generated public and policy debate that consider the strategic requirement for agricultural land and the efficacy of both State and Federal approval processes for the development of extractive industries.

Cotton Australia does not oppose the mining or coal seam gas (CSG) industry provided that the land and water rights of our growers are fully protected and land access arrangements are fair, equitable and provide compensation for growers in recognition of the impact of extractive industries on day to day management of farming operations. The mining and CSG policies developed by Cotton Australia in consultation with our growers reflects this position and highlights that all land access arrangements need to address the complexity of each farming scenario.

Cotton Australia has been highly engaged in public policy processes that uphold the land and water rights of our growers and provide them with choice. We are therefore very familiar with the relevant legislation that applies. We are a current member of the Petroleum Land Access Group convened by the NSW Land and Water Commissioner – Jock Laurie. We have been involved as a key agricultural industry group in discussions that seek to:

- Generate a legislative framework of extractive industries that, in line with recommendations flowing from the NSW Chief Scientist Report and Walker Review, seeks to rebalance the rights of landholders during land access discussions

- Protect prime agricultural lands and existing landholder property rights through policy and legislative instruments such as the strategic regional land use policy, a requirement for an Agricultural Impact Statements where a Review of Environmental Factors is required and the activity impacts on agricultural resources or industries
- Ensure that landholders circumstances are considered in the development of Government guidelines for land access
- Assist landholders with the estimation of compensation payments for the provision of land access to extractive industries.
- Provide improved transparency in CSG/ Mining post approval reporting processes and independent audits that will assist Departmental compliance and community access to information
- Filter concerns back to Government planning and approval organisations regarding consideration of agricultural impacts

During our discussions to improve regulation, reporting, monitoring and compliance associated with development activities it has become abundantly clear that there are major problems with the current State-based EIS (Environmental Impact Statement) process. The Federal Approval processes which are completed in addition to the EIS, through the IESC, are seen to provide extra scientific rigour to the development approvals process, which if not in place would have resulted in the 'unfettered' approval of extractive activities. While it remains to be seen whether these Federal conditions will halt the irreversible impacts to land and water resources, these conditions highlight the 'impact gaps' that are not currently being considered under the State based processes.

The lack of confidence in State approvals appears to exist on both sides with proponents, community interest groups and industry peak bodies commissioning expert reports to justify or contest findings of EIS development proposals. This results in high levels of expenditure by both parties and ongoing distrust in the decision making process. Cotton Australia believes that significant reforms to the EIS process are warranted and would be highly supportive of an overhaul of the assessment process as part of any future large coal mine or CSG review.

Cotton Australia wishes to express that we hold concerns over the NSW gateway approvals process and would recommend 'closing the loop' within the approvals framework. We see that this could be achieved via Federal engagement through enabling the IESC to consider whether their advice has been taken into account by the mining proponent within both the State and Federal approval process. One example of where this will occur is observed in the case of the Watermark coal project where Minister Hunt has committed to referring the Water Management Plan to the IESC for consideration following submission by the proponent. Development of a Water Management Plan with staged water triggers was a condition of a approval on the Watermark project as recommend by advice from the IESC.

Cotton Australia has been actively involved in making submissions regarding the ‘one stop shop’ reform agenda that is being pursued by the Australian Government. Cotton Australia is in general supportive of this approach, as it reduces unnecessary duplication from the approvals process ensuring that current State based policies and regulation are recognised within the development approvals process. However, it is our position that in the determination of a project approval, it is the scientific understanding and data that should ultimately be the measure under which a project is assessed to evaluate its likely impact.

Within the ‘one stop shop’ reforms we are supportive of an approvals based procedure where the Commonwealth decision maker will retain the power under the EPBC Act to add or vary the conditions of approval in particular circumstances. This provides a mechanism whereby the Commonwealth is able to apply conditions of approval to protect matters of national environmental significance such as a water resource. We are firmly committed to the Federal Department and Minister maintaining the right of approval under the water trigger with no devolvement of this legislative instrument to the states.

Recommendations

- 1. CA supports the Commonwealth decision maker retaining the power under the EPBC Act to add or vary the conditions of approval including no dissolution of the ‘water trigger’ the State authorities**
- 2. CA recommends ‘closing the loop’ within the approvals framework through enabling the IESC to consider whether their advice has been taken into account by the mining proponent within both the State and Federal approval process**
- 3. CA supports any overhaul of the EIS approval process that will engender greater trust and support of development approval processes**
- 4. CA is highly supportive of all regulatory arrangements that protect the land and water rights of our growers, enable land access arrangements that are fair, equitable and provide compensation for growers in recognition of the impact of extractive industries on day to day management of farming operations**

Environmental protection

Cotton gins - dust

Cotton Australia has become aware of examples of where environmental regulations appear to lack the flexibility required for local conditions. One such example involves the rules around dust emissions coming from cotton gins. Gins are first stage processing infrastructure which separates cotton lint from seed. They exist across regional cotton growing areas in Australia.

One of the reasons for ginning is to remove dirt (dust) from cotton lint. In many gins, this dust is discharged through devices called cyclones.

In NSW, pollution licensing requires dust pollution to be measured at each point source, in this case each cyclone (and a gin has many).

The problem is that the licensing requirements cannot take into account the average dust emission from all the cyclones. So, if one cyclone has a high reading, and all others are below the maximum the gin is not compliant. This does not make sense, as the total dust load out of the gin is below the license requirements, and the very nature of the ginning process means some cyclones will have a higher dust load than others.

The unreasonable nature of the licencing requirements is further highlighted by the fact that a gin could meet the licencing requirement by blowing more air through the cyclones, still emitting the same total amount of dust, but reducing the concentration. The greater airflow can only be achieved with greater energy consumption, which is of course completely counter-productive, but would allow a gin to meet license requirements.

A further side to this example is that the allowed dust limits, which may be entirely reasonable in a coastal city environment, can be lower than the ambient dust levels in areas where cotton gins are located. Rural areas where windy days often produce raise dust, and that the dust is simply dirt and plant matter that comes from the local environment (on-farm) in the first place.

Gin 'trash'

For many years, Cotton Australia has worked hard looking at ways growers and processors can more efficiently manage the plant by-product of first-stage cotton processing (often referred to as 'gin trash'), for example through composting. Despite the fact that it is a plant product, having gone through first stage processing it is considered by government environmental regulations as 'waste', which triggers considerable levels of regulation and renders it unable to be disposed, made use of or returned to farm. It has been extremely difficult to work through this for what is a sensible environmental outcome.

Bunding of fuel storages

Cotton Australia is of the view that current regulations regarding bunding of fuel storages on farm could be reconsidered. Whilst we understand the need to bund in environmentally sensitive areas such as riparian zones, we believe there should be no need for growers to bund when their storages are at reasonable distance (e.g. more than 200m) from a watercourse. Growers would need to accept responsibility to clean up after any spills, including soil treatment.

Access to technologies and chemicals

Technologies – genetically modified (GM) products

State-based moratoria create uncertainty in agricultural biotechnology in Australia and undermine the regulation of genetically modified crops. Cotton Australia advocates for science based regulation that is commensurate with risk and is accommodating of future biotechnologies.

To attract international investment in Australian agriculture, it is of the upmost importance that the Australian regulatory system for gene technology remains science-based, transparent, predictable and independent from political influence. The current gene technology regulatory system in Australia is already stringent in comparison with some overseas regulators and this burden is exacerbated by inconsistent market interventions by state governments.

The approval process for GM crops could be greatly improved by implementation of a nationally consistent scheme for regulation of transgenic crops, which is commensurate with risk and provides a transparent and predictable path-to-market. A streamlined regulatory system may increase confidence and thus investment in the Australian agricultural space.

There is strong evidence for increased productivity attributed to adoption new technologies such as gene technology. The Australian cotton industry, for example, has seen huge advancement in internationally competitiveness and environmental sustainability through the adoption of transgenic cotton varieties containing insecticidal traits.

Contrary to the European Union, the US appears to have a relatively transparent and predictable regulatory system for gene technologies. However, Cotton Australia would like to highlight the importance of industry consultation in stewarding gene technologies post-registration. For the Australian cotton industry, collaboration between gene technology providers and industry groups have ensured the longevity of gene technology in Australia, contrary to compromised efficacy for gene technology in the US.

In considering new approaches to gene technology regulators, the ability of current regulatory systems to deal with future biotechnologies should be considered, whereby transgenic plant material may be technically indistinguishable from plants bred using conventional breeding techniques.

Recommendations

- 1. Consider a nationally consistent scheme for regulation of transgenic crops which is commensurate with risk and provides a transparent and predictable path-to-market**

Ag and vet chemicals

Cotton Australia supports a risk-based approach to effectively align regulatory effort with risk for agricultural chemicals.

Value may be gained from a risk-based framework that empowers the Australian Pesticides and Veterinary Medicines Authority (APVMA) to focus resources on assessment and registration of products posing greater risk, such as those interacting between Australian natural and agricultural landscapes. As such, development of the Centre of Excellence for Biosecurity Risk Analysis (CEBRA) risk-assessment tool and self-regulation of products of low regulatory risk is supported. Other initiatives such as crop grouping, contestable provisions of assessment services and streamlining import and export regulation is also supported to better streamline the regulatory framework.

Cotton Australia supports a risk-based approach for utilisation of overseas regulatory decisions however, recommends consideration of provisions to allow final decision making power to reside with the APVMA. As such, Cotton Australia strongly recommends that the decisions of international regulators should not be used as the sole justification for registering or cancelling a product/active ingredient for the Australian market.

While there may be scope for utilisation of international decisions where exposure and environmental risks are identical to those in overseas jurisdictions, Cotton Australia supports provisions to transfer final decision making power to the APVMA. This may be achieved through provisions that allow the supply of information to independently satisfy the APVMA of relevant matters after a product is registered via trusted international regulatory bodies. This may be one of many strategies that would deliver regulatory efficiencies whilst protecting Australian agriculture from consequences of post-approval changes to registration made by overseas regulators.

For unprotected cropping situations, risks cannot be extrapolated from international examples to the Australian natural and agricultural landscapes. Cotton Australia strongly recommends exclusion of unprotected cropping agricultural chemicals from automatic acceptance of overseas decisions.

Recommendations

- 1. Consider a risk-based approach for regulation of agricultural and veterinary chemicals.**
- 2. Consider risk-based utilisation of overseas regulatory decisions provided that final decision making power resides with the APVMA.**
- 3. Utilisation of regulatory decisions should not be considered for agricultural chemicals applied to unprotected cropping situations.**

Water

Cotton Australia refers the Productivity Commission to the submission made by the NSW Irrigators Council, which has detailed numerous examples of unnecessary regulatory burden in the area of water management. In particular the submission points to issues with the ACCC Water Charge Rules, the Harper Review recommendation for a new national pricing and access regulator, Bureau of Meteorology information reporting requirements and Australian water markets. Cotton Australia strongly endorses these comments.

The Murray-Darling Basin Authority

The NSWIC submission also focuses on the Murray-Darling Basin Authority's requirement for Basin States to submit Water Resource Plans for each water resource area. Cotton Australia believes that this is one excellent example of regulatory overlap. However, Cotton Australia also believes that the whole Federal Government approach to the Murray-Darling Basin Plan and the associated Federal Water Act is largely one of unnecessary regulatory overlap, and is urgently in need of a full review.

Cotton Australia acknowledges that when the Federal Government decided in 2007 to take a very active role in the management of the Basin's water resources, it was not at all clear how this role would function.

The original Act gave the Commonwealth a wide raft of planning and implementation powers, and while it was always the intention of the Commonwealth to increase the amount of water available for the environment, the mechanism had not been determined.

However, with the decision by the Commonwealth in 2007/08 to purchase or acquire water entitlements at market price, from willing sellers, much of the subsequent resource intensive effort in developing the Basin Plan, requiring the production of Water Resource Plans did not have to occur.

The Commonwealth, no longer needed to rely on its external treaty powers, and could have simply taken the position that it held concerns for the environment and intended to hold water entitlement licences, and would be making the water available to the environment under the management of the Commonwealth Environmental Water Holder (CEWH).

The CEWH could have then been held responsible to develop its environmental water plans, and to implement them.

As it stands there is significant duplication between the Authority and the CEWH in the area of environmental water planning and implementation.

In addition the Plan requires the States, who all already have in place first generation Water Sharing Plans or their equivalents, to produce Water Resource Plans (WRPs). It appears that the primary purpose of these WRPs is to provide the Commonwealth with comfort that their water entitlements will not be eroded over time.

However, this concern is shared by all entitlement holders, and with all the Commonwealth environmental water held as entitlements, it does not seem unreasonable that the Commonwealth should have been prepared to be treated in the same way as all other entitlement holders, with the same rights to engage in the State Water Sharing Plan processes.

While it may be too simplistic to say that the Commonwealth had no need to undertake the extensive work the Authority has done in establishing Sustainable Diversion Limits (SDLs) an alternative approach could have simply been for the Commonwealth to undertake a process to identify environmental targets and then commenced an entitlement acquisition process.

Instead, the approach has created by State/Commonwealth duplication (WSP/WRP) and Commonwealth duplication between the Authority and the CEWH.

A further example of duplication within the Authority is the River Operations role where there appears to be significant duplication between the Authority (the legal operator) and NSW Water which is charged with the actual operation. Cotton Australia contends that this duplication is costing Commonwealth and State Governments tens of millions per year. Some of this is being recouped from irrigators through State water management charges, and there appears to be a recurring threat from the Commonwealth Government to introduce MDBA charges on irrigators, something that Cotton Australia vehemently opposes.

Recommendations

- 1. Cotton Australia strongly supports the issues and recommendations stated by the NSW Irrigators Council in their submission, which address issues with the ACCC Water Charge Rules, the Harper Review recommendation for a new national pricing and access regulator, Bureau of Meteorology information reporting requirements and Australian water markets.**
- 2. Undertake a full review of the entire Federal Government approach to the Murray-Darling Basin Plan and the associated Federal Water Act**

Transport

Cotton growers are often frustrated with the high degree of regulation around transport, particularly the movement of conditional register equipment on local roads.

It is not uncommon for farmers to have half a dozen more conditional registered vehicles that may make regular, but short trips on local roads.

An extraordinary effort is required to ensure all registrations are current, and necessary permits for over-dimensional movements are in place.

The increased use of “Notices” or “Class Permits”, which allow regular activities to occur without special permits, would be welcomed. Currently, there are many examples where the farmer must apply for permits either on a per-trip basis or an annual basis, and when due for renewal they are in effect automatically renewed (except for the fact that an application still has to be made).

While in theory the advent of the National Heavy Vehicle Regulator is meant to streamline transport movement approvals, and this is happening to some degree with interstate movements, it has also led to an increase local governments requiring the issuing of permits for local road movements, as they become more aware of their role as road managers.

While some road managers are better than others, the fact remains that they have 28 days to respond to applications made through the NHVR, and this does represent an unjustified burden on road users.

Recommendations

- 1. That the governments consider the ability to have a blanket registration for all vehicles owned by a farm business. This would significantly reduce the amount of red-tape, with no impact on road user safety.**
- 2. Consider allowing increased use of “Notices” or “Class Permits”, which allow regular activities to occur without special permits.**

Other – carbon farming

Cotton Australia would like to use this opportunity to highlight some of the regulatory-based issues associated with current (and past) regulations underpinning the Federal Government’s emissions reduction policies, as they apply to the agriculture sector.

Cotton Australia is broadly supportive of *voluntary* programs that reward landholders’ efforts to reduce emissions or sequester carbon on their properties. Such approaches have underpinned the Carbon Farming Initiative (CFI) and current Emissions Reduction Fund. If designed properly and simultaneously support farm productivity goals, these initiatives should result in a ‘win-win’ scenario where landholders are rewarded for implementing sensible land management practices.

However, a good portion of the agriculture sector has not engaged with the CFI/now Emissions Reduction Fund and is not likely to given it does not make good business or economic sense to do so. The scheme is highly regulated, onerous and complex, involving significant amounts of paperwork and data compilation and management. Too much so for an individual farm business or even aggregation to manage on their own. This has resulted in very high transaction costs, third party costs and has given rise to a market of service providers. As such, the sector is not benefitting in the way that the original policy intended.

Whilst we understand that rules and obligations for monitoring and accounting emissions need to be met and agree credibility around such activities is of utmost importance, we feel that there must be some scope to strike the right balance, streamlining it to be more fit for purpose. To this end and as one possible improvement, Cotton Australia has always encouraged the government to consider the place of industry Best Management Practices programs in these initiatives, e.g. given they are grounded in the latest R&D and in the cotton program include emissions reduction and sequestration practices, have the resulting carbon credits from implementing such practices recognised.

Biosecurity

Cotton Australia is supportive of a risk based and streamlined framework for biosecurity. As such, Cotton Australia is generally supportive of the current arrangements for biosecurity and will continue to work with the National Farmers Federation to provide advice on the regulations being developed under the new Biosecurity Act 2015.

Other

Employment

Australian businesses face a distinct disadvantage in competing with international competitors when it comes to labour input costs. Australia has the highest minimum wage in the OECD, and some of the highest labour costs in the world. Therefore flexible regulation and streamlined and efficient processes in place to manage workplace relations are highly important in the Australian context.

We support the National Farmers' Federations assertions that small businesses, including on-farm and throughout the supply chain, face a minefield when it comes to employing staff, through a complex web of federal employment, safety, migration and taxation laws, supplemented by State laws on a range of issues from training to workers' compensation. In addition, the NFF's comment that the focus of government and regulators has shifted to passing employer liability across the supply chain and that in the small or family business context, many 'best practice' ideals get very difficult to achieve through lack of resources and time.

Payroll tax and superannuation

Whilst it is not considered a regulatory 'burden'/duplication issue and is more relevant to the Government's Tax Reform, our experience is that payroll tax is one of the biggest business burdens for farm businesses, impacting on growth and competitiveness. The current payroll tax arrangements create distortions by reducing the incentive to hire more workers, creating a barrier to business expansion, and impacting on labour intensive industries. Agriculture must compete internationally with countries with substantially lower wage rates. The payroll tax exacerbates this issue for farms and small businesses in rural areas. Key to these issues are the threshold limits and how they impact on agricultural businesses – ensuring appropriately high threshold limits would provide substantial benefits to agricultural small businesses who have large numbers of employees involved in the operation of the enterprise.

The low threshold for superannuation places a costly and time consuming burden on growers to pay superannuation for employees that remain on the farm for a short period of time.

Workplace relations

We strongly encourage the PC to refer to the detailed work that the NFF has included in their submission to table specific examples of "red tape" throughout the Fair Work Act 2009.

Workplace health and safety

The Australia cotton industry takes workplace health and safety very seriously. As an industry we have consistently tried to foster a safe work culture, and have made Workplace Health and Safety a focal point of our industry Best Management Practice program, myBMP. However, there are a number of examples where Regulatory Compliance appears to do nothing for safety, but involves substantial extra regulatory burden.

The National Farmers' Federation PC submission explains the significant issues that exist within the Work Health and Safety Act 2011 (WHS Act) and associated material, which together comprise an Act, Regulations, 23 Codes of Practice and 46 Guidance Materials. Key points worth highlighting that Cotton Australia agree with are:

- That the various documents associated with the WHS Act, and the additional 29 'fact' or 'information' sheets provided to explain how to comply with the regulatory regime, are useful for safety management professionals, but for the small business person are simply another thing to 'stay on top of'. And yet the regulatory regime requires, as part of the work health and safety duties, that all officers in a business or undertaking maintain an 'up to date knowledge'.
- The current settings in the WHS Act are in many cases, wholly disproportionate to the nature of the offence.
- The regulations to the WHS Act should be reviewed to remove duplication or unnecessary regulation. Reducing the level of prescription in many cases will have

no negative effect on health and safety of workers but will make complying with the WHS Act easier. The NFF cite examples relating to training, the appointment of a Health and Safety Representatives.

A number of examples that Cotton Australia wish to highlight to the Productivity Commission are discussed below.

Fire Extinguishers

Fire extinguishers need to be inspected every six months. This would appear to be a significantly over-frequent inspection cycle. Not only does this impose an unreasonable management, record keeping, and financial impact, in many rural and regional areas it is entirely impractical to get qualified inspectors on-site.

The situation is marginally better in NSW where it is possible for the farmer to become qualified to carry out inspections, but in Queensland all inspectors must be trained and licensed with the Queensland Building Service Authority (QLD BSA).

This simple inspection requires the reading of the pressure gauge, giving the cylinder a shake, checking the locking pin is correctly in place and checking the discharge hose is not blocked.

Forklift Licences

Under the harmonised national workplace health and safety laws, the only piece of equipment found on most farms that requires a specific licence to operate is a forklift.

Cotton Australia understands forklifts can operate in high risk environments such as warehouses, and special training may be justified.

However, in a farm environment, Cotton Australia contends that the same obligation to ensure machinery operators are competently trained should apply equally to the operator of a forklift, as to the operator of a front-end loader. The obligation should be on the employer to ensure operators are competently trained.

While Cotton Australia is not in a position to definitely say how that training should occur, it certainly can say that in most situations training a forklift operator for on-farm work should not require a five day course, not only incurring a whole range of additional costs, but also requiring the trainee to be absent from other duties during that period.

Test & Tag Electrical Cords and Devices

Cotton Australia understands that Testing and Tagging of electrical cords and tools is not required in Queensland if the electrical switchboard being used is fitted with Residual Current Devices. **Cotton Australia recommends that this adopted by other States.**

Recommendation

- 1. Create a separate, simpler work health and safety regime for small business and work with industry to ensure they suit agricultural contexts**

Migration

Despite the strong desire to employ local workers, the fact is that in many cotton growing areas farms simply cannot source local workers to fill essential on farm roles, despite relatively good incentives. Migration programs therefore provide an essential source of labour for many growers, particularly through the Working Holiday Visa schemes and to an extent 457 visas.

Growers encounter a number of regulatory issues when attempting to source workers through migration pathways. A common situation is where an employer has a promising, but unqualified backpacker which they wish to keep on, yet given the rules around sponsorship, there is often no pathway for workers on 417 visas to transition to a 457 visa. Without an agriculture-related degree, backpackers on a 417 do not meet the requirements to be sponsored by a farm employer.

The ability of farm businesses to fill skilled labour shortages with the use of overseas workers on the 457 visa program is limited by its reliance on the ANZSCO coding system, which was never intended to define current industry skills needs exhaustively. Many skilled agricultural occupations are simply not on the Consolidated Skilled Occupations List (CSOL) which use to determine eligibility for 457 visas. For example, a farm supervisor is a skilled job, but sits between the ANZSCO codes for “Farm worker” (low skilled) and “Cotton farmer” (degree qualified). Such a person may be variously employed as, and describe themselves as “leading hand”, “overseer”, “assistant manager”, yet all do much the same job and require a high level of skills. They are unlikely to be degree qualified – and not being listed on the CSOL means they are prima facie ineligible for a 457 visa. National data clearly shows that the proportion of 457 visas granted to the agricultural sector is very low.

Changing the 457 visa program so that the CSOL can be varied to reflect new skilled occupations is vital. This one change would remove the largest single barrier to the 457 visa program faced by the agriculture sector overnight. An alternative to this is to negotiate a Labour Agreement with government which is a highly onerous and expensive option.

Recommendations:

- 1. Change the 457 visa program by allowing the CSOL to be varied to reflect new skilled occupations**
- 2. Update the ANZSCO codes to reflect modern agricultural occupations.**

Energy

Energy market and prices

We are pleased to see that the PC acknowledges the impact of regulation on escalating electricity costs in Australia and strongly agrees with the statement, “*poor regulatory frameworks governing electricity markets have contributed to sharp, and in some cases unnecessary, increases in energy costs*”. Cotton Australia has been working on this issue for a number of years and still sees a need for change in the national energy regulatory framework and supporting policies.

Irrigators have faced electricity bill price rises of up to 300% since 2009 and we remain very concerned about the impact of increasing electricity prices on farm profitability.

CA has a major overarching concern in relation to the current governance arrangements particularly the propose – response model. The current arrangements under the National Electricity Market establishes that network businesses propose their revenue and costs for the determination period with the regulator only able to either accept the proposal or reject the proposal with sufficient explanation. Clearly this model puts the networks on the front foot. This is a key pillar which restricts the Australian Energy Regulator’s (AER) operations and ability to act effectively as a regulator. CA believe that without sufficient changes to the ways networks submit their proposal to the regulator there will be a limited ability of the regulator to introduce decisions that are in the long term interests of consumers.

Cotton Australia remains highly concerned regarding the ability of the AER to redress well recognised failings of previous regulatory arrangements. This is particularly clear in relation to the RAB, and has been acknowledged by the AER.

‘Clause 11.56.5 of the Transitional Rules outlines that we are excluded from conducting an ex post review of capital expenditure incurred in the 2009–14 regulatory control period. This means we are not permitted to adjust the opening RAB for any inefficient capex (as assessed to reasonably reflect the capex criteria and in a manner consistent with the capex objectives) during the 2009–14 period.’

Cotton Australia and no doubt the broader community would like to see an adjustment of valuation of network assets to ensure that we, as consumers, are not and will not continue to pay for poor investment decisions by the network companies.

Cotton Australia continues to be concerned in relation to the funding mechanisms within the existing governance framework. Under current arrangements networks can claim back costs from consumers for the development of their network determination proposals. We believe that such arrangements contribute to an uneven playing field where the AER has a

set level of budget and resources and as such has an inability to allocate infinite resources to challenge claims made by networks under the propose – respond model.

The Harper Competition Policy Review advocates for the generation of a single Access and Pricing Regulator (APR). CA believes that prior to the creation of the proposed APR the Government must make a strong case for its creation, demonstrating true value to consumers and clearly communicate and outline its obligations for regulatory oversight. We are concerned that a consolidated regulator may be exposed to a reduction in resources which would further exacerbate the challenges faced by the regulator to effect decisions that are in the long term interests of consumers.

These issues represent only a small insight in to some of the overarching regulatory issues that CA has identified in its investigation of Governance and regulatory structures within the National Electricity Markets. For further detail on identified issues please refer to our submissions made to the *Review of Governance Arrangements for Australian Energy Markets*.

Recommendations:

- 1. CA recommends that the propose – response model be overhauled to allow the regulator to deliver determinations that are in line with the long term interests of consumers**
- 2. CA recommends a rule change under the National Electricity Rules to allow the regulator to redress inefficient invest in asset infrastructure by the network companies**
- 3. CA supports a rule change to limit the ability of the networks to claim back costs incurred in the regulatory process from consumers**
- 4. CA does not support the creation of a single access and pricing regulator without demonstration of true value that will lead to decisions in the long term interests of consumers.**
- 5. CA supports the introduction of food and fibre tariffs by the AEMC (and lead by the COAG Energy Council) that address the specific electricity needs and requirements of the agricultural sector**

Domestic regulation and the requirements of importing countries

The Issues Paper questions whether Australia’s farm export competitiveness could be improved by minimising duplication between domestic regulation and the requirements of importing countries. We wish to highlight that theoretically this might be ideal but in practice may be difficult to include the different requirements for individual importing countries and may in fact, complicate the process. Whilst ourselves and our Australian Cotton Shippers’ Association colleagues are not opposed to this concept, we would suggest careful consideration of the same.

Conclusion

Cotton Australia is pleased that the Productivity Commission is undertaking this review. Given the pre-existing body of work on the regulatory burden on agricultural businesses from previous inquiries and reviews undertaken, we hope to see this review drive substantial improvements that get to the heart of the red tape issues that are felt in the agriculture. We believe that key to this is undertaking a comprehensive “root and branch” review of all regulation, involving consultation with industry and businesses. Cotton Australia believes that as part of this particular Inquiry, a detailed examination of the impact of regulation on 10 farm businesses across Australia should be undertaken. We are confident that the development of such case studies would crystallize the issues and priority areas for attention, and provide a foundation for undertaking improvements.

We thank the Commission for this consultation opportunity and would welcome further consultation opportunities to discuss the points raised in this submission.