



18 August 2016

Regulation of Australian Agriculture
Productivity Commission
Locked Bag 2, Collins St East PO
Melbourne VIC 8003

Via Email: agriculture@pc.gov.au

Regulation of Australian Agriculture - Comments on the draft report

Thank you for the opportunity to provide some brief comments in relation to the Productivity Commission's draft report on their inquiry into the regulation of Australian agriculture.

The Australian Sugar Milling Council (ASMC) is the peak industry organisation for raw sugar milling in Australia. The ASMC represents some 95 per cent of Australian raw sugar production. There are 24 sugar mills in Australia, owned by eight companies.

Milling Council members have considered the Commission's draft findings and the attached is representative of their views.

We look forward to discussing these with the Commissioners during the public hearing in Brisbane on 24 August.

ASMC welcomes the attention of the Productivity Commission to the Regulation of Australian Agriculture and looks forward to continuing to assist the Commission through this process.

Yours sincerely

Dominic V Nolan
Chief Executive Officer



ASMC Submission in response to the Productivity Commission's draft report on its inquiry into the regulation of Australian agriculture

The Overview of the Productivity Commission's (PC) draft report on its inquiry into Regulation of Australian Agriculture states the key task for the inquiry as identifying regulations that impose an unnecessary (and therefore avoidable) burden on farm businesses and, where there are legitimate policy goals underlying the regulation, to look at whether there is scope to achieve the regulatory objectives in a more efficient way.

In providing feedback to the PC on elements of its report that relate to the sugar industry, the Australian Sugar Milling Council has closely considered the ten principles for Australian Government policy makers as set out in the Australian Government Guide to Regulation (Commonwealth of Australia, Department of Prime Minister and Cabinet, 2014).

ASMC has particularly considered the first five principles in assessing the PC's report and views on agricultural regulation:

- Regulation should not be the default option for policy makers: the policy option offering the greatest net benefit should always be the recommended option.
- Regulation should be imposed only when it can be shown to offer an overall net benefit.
- The cost burden of new regulation must be fully offset by reductions in existing regulatory burden.
- Every substantive regulatory policy change must be the subject of a Regulation Impact Statement.
- Policy makers should consult in a genuine and timely way with affected businesses, community organisations and individuals.

The other key reference point for ASMC in providing the feedback are the seven Regulatory Impact Statement (RIS) questions.

- What is the problem you are trying to solve?
- Why is government action needed?
- What policy options are you considering?
- What is the likely net benefit of each option?
- Who will you consult about these options and how will you consult them?
- What is the best option from those you have considered?
- How will you implement and evaluate your chosen option?

A further consideration by ASMC in making this submission is that the Regulation of Australian Agriculture is broader than farm businesses. Most, if not all, regulation in agriculture has a direct or indirect impact on the entire agriculture value chain, including processors.



Land use and access regulations

The PC states in the report that land use for agriculture has come under increased scrutiny in recent years as a result of:

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

Of particular interest to sugar industry stakeholders is the final point and the increase in pressure on Governments to convert large tracts of agricultural land to national parks. It is important that Governments determine whether conversions of this nature can deliver an overall net benefit. Stewardship of this land does not always improve when the land passes from an owner/operator (farmer) to the Government. This should be a particular consideration when the land under question is located in high rainfall / fast growth regions where noxious weeds and vines can quickly dominate a landscape if not closely managed, as can infestation of feral animals if not actively managed.

Environmental regulation

This is the policy area where the RIS process is most often disregarded or not rigorously applied by Governments.

The targeted environmental outcome of regulations is often considered in isolation from the economic consequences that will flow from the disruption to farming activities. This can especially be the case when environmental regulations might be considered to have a relatively minor implication on a farm by farm basis, however have a significant cumulative impact at the market or processing scale, such as a sugar mill.

Genetically modified crops

The sugar industry has invested significantly in research into the prospect of accessing productivity improvement through the introduction of gene technology into the industry owned sugarcane plant breeding program. This has only been possible because the research has been conducted in Queensland (where there is no moratorium) and internationally. Successive Queensland Governments have been prepared to enable such research, and remarkable productivity improvements in crops such as cotton have been achieved through the introduction of gene technology in their plant breeding programs.

Productivity improvement has been achieved in commercial operations while at the same time improving environmental outcomes through the use of less chemicals, and more environmentally benign chemicals.



Biosecurity regulation

Biosecurity regulation in Australia appears to be headed in the right direction. Both the Australian and Queensland Governments now have modern biosecurity arrangements that have been introduced in 2016, with other States considering closer alignment of their biosecurity legislation.

The modernising of biosecurity arrangements has led to more self-regulation by industries and subsequent lowering of the cost, without compromising the overall integrity of the arrangements.

Foreign Investment in Australian agriculture

As has been identified in a range of recent submissions, there has been a significant level of investment in the Australian sugar milling sector over the past 6 years (see ASMC Submission to the Senate Inquiry into Marketing Arrangements, 2014). Around 75% of the milling capacity in Queensland is owned by foreign parent companies.

Regardless of whether the capital has been from Australian-based or internationally based parent companies, the milling sector in Australia has seen much-needed substantial investment and upgrade of assets and processing facilities.

Australian agriculture must continue to attract capital investment, including from internationally based companies. ASMC supports a regulatory environment for all investment and business operations that is transparent, outcomes based, and meets the criteria identified in the Australian Government's Guide to Regulation.

Competition policy

The PC has stated that the specific sugar industry legislation passed in Queensland in December 2015 is likely to restrict competition and deter investment in milling capacity and innovative marketing.

The Private Members Bill that resulted in the legislation being passed fails almost every test when the filter of the ten principles for Australian Government policy makers is applied.

It defies the findings of the Queensland Productivity Commission (QPC) RIS: the QPC found there was no net benefit; there was no market failure; and there will be substantial additional costs to the industry as a result of the legislation.

The ASMC agrees that existing competition regulation and oversight is adequate for managing concerns about abuse of market power.

There are a range of statutory provisions under the *Competition and Consumer Act 2010* (Cth) (CCA) designed to protect competition and the misuse of market power. These provisions have been subject of recent review (*Harper Review*). The provisions include Unconscionable Conduct, Collective Bargaining, Misuse of Market Power, and Exclusive Dealing, as well as provisions around misleading or deceptive conduct.

The Australian Sugar Milling Council supports minimal government intervention in commercial matters unless there is demonstrated market failure that is not addressed in the myriad of existing consumer and competition laws and other safeguard mechanisms. In particular, there is no case for sugar-specific regulatory intervention versus any other agricultural industry, or indeed any other industry.



Draft recommendations

Draft recommendation 3.1, 3.2 and 3.3 - native vegetation, biodiversity and environmental regulations

ASMC supports the Productivity Commission recommendations in relation to native vegetation, biodiversity and environmental regulations. From the perspective of principles of regulation, ensuring a risk-based approach, with market drivers and greater engagement and consultation, will lead to a more efficient and effective regulatory framework.

Draft recommendation 8.6 - Arrangements to support the biofuel industry

The PC has stated that arrangements to support the biofuel industry - including excise arrangements and ethanol mandates - deliver negligible environmental benefits and impose unnecessary cost on farmers and the community, and should therefore be removed by respective Federal and state governments by 2018.

The Queensland Biofuels Mandate is one instrument in the Queensland Government policy platform to increase renewable energy to 50%, further regional industry development and position Queensland as a major producer of bio-commodities into the future, within an environmental framework.

Around the world, the introduction of biofuels into domestic fuel markets has required significant market intervention and sustained policy regulation by governments to be successful, with biofuel mandates in 66 countries at the national or state/provincial level at the end of 2015¹. While mandates do not represent a perfect regulatory solution to oligopolistic markets, when supported with appropriate policy mechanisms they can, and do, deliver significant greenhouse emissions savings - and can deliver fuel cost savings.

The Queensland Biofuels mandate has attempted to undertake the key learning of the New South Wales mandate, including mechanisms to ensure that distribution companies provide sufficient biofuel blended fuels, that cost benefits are passed on to consumers, and perhaps most critically, a public education campaign that is focused throughout the supply chain, around the credibility of biofuels.

Environmental benefits

Molasses based ethanol production, where sustainably produced, is recognised the world over as the lowest greenhouse emissions intensity source of ethanol. Life cycle analysis, as per ISO14044, has demonstrated that ethanol produced via molasses in Queensland is 55%-85% lower in greenhouse gas emissions than fossil fuels. Australian and Brazilian molasses based ethanol production are of similar greenhouse emissions reduction intensity. However, importing ethanol from Brazil to Australia increases greenhouse emissions associated with the fuel, resulting in locally produced ethanol delivering superior greenhouse emissions reductions compared with Brazilian ethanol used in Australia.

Further, the Australian sugar industry has not undertaken sugarcane greenfield expansion to meet ethanol mandates or past producer subsidies. Expanding molasses based ethanol production in Australia to meet current mandates is fully achievable within the existing footprint of the

¹ REN 21, 2016, Key findings.



industry. Biofuel producers are more likely to invest in next generation biofuels using under-utilised fibre residuals from their existing feedstock and infrastructure value chain, rather than undertaking the extraordinary investment required in greenfield projects to establish a whole new supply chain.

Therefore, ASMC would suggest that molasses based ethanol production leads to significant environmental benefits, but requires a mandate, or similar, to deliver these benefits.

Cost to farmers

The PC report alluded to the potential for a biodiesel mandate (2% NSW, 0.5% Queensland) to have a significant impact on farms, as 82% of fuel use is diesel. However, diesel sold at the bowser currently in Australia is permitted to be sold as a 5% biodiesel blend, without any labelling required at the point of sale. Given the proposed mandates are lower than the allowable blend concentrates at the bowser, and delivered via a 5% blend, ASMC suggests that a biodiesel mandate will have minimal cost impact on farmers.

Draft Recommendation 11.2 - Sugar Industry (Real Choice in Marketing) Amendment Act 2015

The ASMC supports the PC's view that the Queensland Government should repeal the amendments made by the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015*. This is an example of regulation being introduced without any of the normal pre-requisites for intervention by Governments. The changes to the Act were passed despite a highly critical RIS report by the QPC. The QPC assessment found there was no evidence to support a case for market failure in the Queensland sugar industry, and that the benefits of the additional regulation did not outweigh the costs.

There is a key role for the Federal Treasurer to review the Queensland amended Act against the uniform competition policy in Australia. The Queensland Government has asked the Treasurer to refer this legislation to the National Competition Council for review.

ASMC suggests that the Productivity Commission could support this approach by broadening its recommendation 11.2 to "The amendments made by the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015* in Queensland should be referred to the National Competition Council for consideration in terms of competition policy, and consideration of whether the benefits of the authorised anticompetitive conduct outweigh the costs."

Recommendation 12.1 - Thresholds for examination of foreign investments in agriculture

ASMC supports the PC recommendation that the screening threshold for foreign investment in agricultural assets should revert to the same level as other sectors of the economy at \$252 million. Transparency and confidence, including regulatory stability and consistency, is a strong driver for investment attractiveness. Australia has a robust regulatory framework including the Corporations Act and Consumer and Competition Act that provides a strong set of rules and obligations governing corporate and business behaviour.