



Productivity Commission

Inquiry into Regulation of Agriculture

**Submission prepared by
the Western Australian Government**

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Western Australian Government Submission
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In response to the Productivity Commission's Inquiry into Agricultural Regulation, the following submission has been prepared on behalf of the Western Australian Government.

The Western Australian Government stresses that, while the State has a number of relatively smaller industries with output directed to supply of the domestic market, the local agricultural sector is predominately export-focused with competitiveness determined by what other major exporting countries are able to achieve in markets targeted by Western Australian exporters. Consequently, the Western Australian Government is firmly of the view that the Productivity Commission should focus on policy or regulatory priorities which will enhance the agricultural sector's export competitiveness.

In our submissions to the White Paper process, the Western Australian Government encouraged the Australian Government to concentrate on policy development which offers market driven solutions to increase the investment and export readiness of Australian agri-business. In particular, those aspects of Federal regulation which impact on exporters were identified as important foci of attention. The White Paper, while containing a number of important initiatives, largely failed to deliver on this outcome.

Given the number of cross jurisdictional regulations impacting on agriculture, and the willingness of most governments to tackle red tape, the Western Australian Government encourages the Productivity Commission and Federal Government to utilise national bodies, such as the Regulation Reform Task Group under the AGSOC umbrella, to source information and assist in developing consensus positions.

Background

Agriculture is one of the priority areas identified in the WA State Government's Regulatory Reform Policy Statement, which was released in September 2015. The Department of Agriculture and Food Western Australia (DAFWA) has made significant changes that align with the Government's reform priorities, such as working with the Department of Transport to simplify vehicle licensing processes for agricultural transporters and repealing the Genetically Modified Crop Free Areas Act. DAFWA is progressing the deregulation of the potato industry and the Department of Finance is providing some advice on transitional assistance, particularly in respect of

a set of principles that can be broadly applied across government to guide decision making on transitional assistance.

The Western Australian Government has committed significant resources to reducing red and green tape, and associated business and community costs, which is being driven through a Ministerial Taskforce on Approvals, Development and Sustainability (MTADS). A supporting Director General level taskforce includes a focus on reducing business costs across the agriculture and food sector, and reducing impediments to new business development.

The Western Australian Government is committed to creating a better business environment to enable businesses across the State's export-focused sectors to compete more successfully against overseas competitors. The Government is concentrating on an on-going review of relevant legislation and processes.

The State Government has commissioned targeted reviews of ineffective and unnecessary regulation and inefficient agency processes, with a view to removing those which impose administrative or financial burden beyond adequate benefits. This work is identifying inefficiency and business impacts across all levels of government, and includes provision for specific recommendations for improvement to relevant Ministers and agencies.

Some important reforms have already been achieved, such as amendments to clearing permit regulations. In addition, the Economic Regulation Authority has released a report on its enquiry into Microeconomic Reform.

An important Western Australian initiative was the partnership of the Department of Agriculture and Food Western Australia with CCIWA to reduce business costs in agriculture where poor awareness of processes such as regulatory applications or applicant regulator relationships or other issues impede progressive business development and operation.

In Western Australia, the State has adopted a Lead Agency Framework <http://www.dsd.wa.gov.au/7633.aspx> to handle areas of multiple jurisdictions.

DAFWA has provided a service for the past 3 years assisting agribusiness proponents to:

- Understand their regulatory requirements prior in the early stages of business planning, enabling business to have a 'full handle' on what is expected prior to commencement.
- Compile development applications, to meet the existing requirements of regulators, in an integrated format.
- Progress their development applications through the regulatory pipeline (chaperoning).

- Find appropriate sites that meet functional requirements with both adequate servicing and separation distance.
- The provision of these services has led to DAFWA functioning as a one stop shop for agribusiness proponents.

Parallel to this, DAFWA is working on reducing the compliance load on business by investigating a model that allows a state regulator and an industry standards organisation to superimpose compliance approaches, reducing compliance audits to a single pass.

Local Government should also be encouraged by the Australian Government to participate constructively in the process of streamlining application processes. Adequate resourcing is a particular issue for this tier of government.

The Collective Burden of Regulation

- *Are there systemic problems with government regulatory processes and institutions which create unnecessary regulatory burdens on farm businesses?*

The Western Australian Government rejects any suggestion of systemic application of unnecessary regulation at a State Government level, given the considerable resources devoted to red tape reduction. Areas for reform and improvement remain, however, and overlap in regulation or confusion between the application of regulation across different levels of government remains an issue. National bodies exist which could play a greater role in resolving such matters.

Within government, review units (for example, the Regulatory Gatekeeping Unit) have been developed in an attempt to reduce the overall regulatory burden/cost on industry and, as an unintended consequence, carries the risk of imposing significant additional costs on government agencies.

West Australian Government departments are mindful of the regulatory burden/cost to industry and their consultation processes provide the opportunity to industry to demonstrate impact.

Land Use Planning

The Western Australian Government looks to achieve the right balance between commercial developments across all sectors while acknowledging the need to protect valuable agricultural land from unnecessary development. This is particularly important in peri-urban areas where encroaching urban use can remove land from production or incompatible land uses become an issue, for example, spray drift and noise. State rural planning policy contains recommendations for buffers and other requirements and guidelines for where subdivision and loss of agricultural land is not

appropriate. DAFWA works closely with Department of Planning on these issues and has input into the evolution of policies.

The problem of wild dog control in the rangelands has emerged as a significant issue in terms of efficient pastoral operations and is an area that warrants support at a national level.

Land use planning is an important factor supporting regional development and industry development, and time frames associated with land use planning impact on development. In agriculture industry, competition for land use including for mining, conservation and cultural purposes can limit development. The Western Australian Government supports the position of coexistence where possible and recognises that the “appropriateness” of land use can change over time. The Ord Expansion Project in the State’s north is a prime example where agricultural, mining, environmental and traditional owner interest have been accommodated.

- *How could development assessment and approval processes be improved?*

During 2015, and in keeping with the State Government's commitment to 'Red Tape Reduction', the Planning and Development (Local Planning Schemes) Regulations 2015 came into effect. These Regulations took effect in all local government schemes and provide for faster determination of local planning scheme amendments, standard exemptions from planning approval, a single decision-maker for structure plans and uniform procedural approaches for development applications. This reform was substantial, and the result is a more streamlined planning system that provides greater certainty and less duplication for developers.

In addition, the *Planning and Development (Development Assessment Panel) Regulations 2011* were amended in 2015 and now provide applicants with more choice on who determines their applications. Although development applications must be lodged with the local government, for development with a value of more than \$2million, the proponent may opt for the application to be determined by a Development Assessment Panel.

The Government envisages scope for improvement by adhering to the principle that approvals should be directed (solely) to authorities with most direct responsibility for the proposed activity. For example, Section 267A of the Planning and Development Act 2005 (PDA), currently requires the Minister for Lands or a person authorised by the Minister to provide approval as the owner of Crown or freehold land in the name of the State to a development application. This is potentially a cumbersome routine because the developments that typically occur on Crown land are more directly managed by local governments. Local authorities have better knowledge about appropriate activities on these lands (and in their local area), and are therefore in a better position to assess development proposals than Department of Lands. Removing such requirements would save time for the State agency, local governments and proponents alike.

The Department has already taken steps to reduce such incidences of duplication in relation to approvals under the *Building Act 2011* and is exploring other similar opportunities at the State level.

The development assessment and approval process can be improved by providing agricultural industries the certainty and protection on their future particularly in relation to urban encroachment.

The Department of Health *Guidelines for Separation of Agricultural and Residential Land Uses* is a review process that is based on site risk assessment. It is designed to address environmental health issues and potential impacts on land users, to reduce impacts on both established commercial agricultural uses and new residential lands. (The link to web page to the Health guideline is as follows: <http://www.public.health.wa.gov.au/cproot/4913/2/Guidelines%20for%20Agricultural%20and%20Residential%20Buffer.pdf>).

The Western Australian Planning Commission acknowledges the sound and logical approach of the Guideline and has adopted it to guide development where urban meets agricultural zonings and manage land-use conflicts. There are a number of other States that also use this approach.

The Western Australian Planning Commission's (WAPC's) draft State Planning Policy (SPP) 2.5 Rural Planning Policy (section 3.4) seeks to clarify the relationship between planning and other environmental and health regulations for rural land uses. It also incorporates the state policy on poultry farms (SPP4.3) and has broadened its scope to include other intensive livestock operations. The rural planning guideline which accompanies the policy will be further refined to help local planners interpret and implement the policy. The Government intends this policy to assist larger capacity intensive livestock operators and processing operators who previously required multiple approvals.

With respect to smaller intensive agricultural production enterprises, the Department of Planning intends working with DAFWA and other agencies to develop guidelines to assist local government in dealing with intensive livestock and horticultural proposals. This information may form part of the revised rural planning guideline and will assist in remedying issues which arise when local government lacks the resources to deal with applications. The option of a "one-shop" approach is also being developed.

- *Do different development assessment and approval processes result in unnecessary regulatory burdens?*

The State Government's blueprint for planning reform had a key aim to standardise and streamline planning approvals, and the principle of the 'single decision-maker' has been woven through the resultant reforms, including the Regulations mentioned above.

The Regulations introduced, for the first time in the Western Australian planning system, deemed provisions for local planning schemes. The deemed provisions are set by State Government and automatically apply to all local governments across

WA. The provisions override any pre-existing equivalent provisions in individual schemes, meaning that planning processes, including development assessment, are consistent across the State and cannot be altered by local government authorities.

The combined effect of recent reforms is that the State's planning system is embedded with consistent development procedures, ensuring minimal regulatory requirements for proponents. .

Within the planning process, jurisdictions will assess developments in accordance with local situations and planning policies. The very nature of the process allows for different approaches to resolve land-use issues which in turn, may result in some unnecessary regulatory burden. By providing a standard risk assessment approach, such unnecessary regulatory burdens may be minimised.

- *Are there inconsistencies between land use regulations and other regulations? What is the evidence for this?*

The Government is not aware of any inconsistencies between land use planning regulations and other State Government Regulations. There are six sets of regulations that sit under the *Planning and Development Act 2015*, and the Act and Regulations outline which instruments prevail in the event of an inconsistency. For example, any provision in a scheme that conflicts with deemed provisions are, to the extent of any inconsistency, of no effect. Similarly, if a local government introduces a local law that conflicts with the local planning scheme, the local law is of no effect.

Inconsistent use of certain terms, such as buffer and separation distances, have previously created issues across environmental and planning procedures however recent reviews of WA's environmental guidance statements (Office of EPA and DER) and state planning policies (SPP 2.5 and the current review of SPP 4.1 – Industrial buffers) have sought to define and clarify how such terms apply in land use planning and environmental approvals to remove roadblocks.

Residential/urban encroachment has acted to limit operations of established farms. Agriculture has been viewed as an emitter as opposed to the conflicting sensitive use, residential development. While the emitter needs to ensure it doesn't impact on sensitive uses, the reverse has not applied under WA environmental approval processes. This issue is now being addressed through proposed changes to state land use planning policies and the 2012 WA Department of Health guidelines on the separating agricultural and residential use are providing greater clarity.

- *Do the benefits of regulations that restrict land use to agriculture activities outweigh the costs?*

In the Western Australian planning system, State Planning Policies are outlined in the Act as high order and enforceable policies, that are required to be implemented by all decision-makers, including the Minister for Planning, Western Australian Planning Commission (WAPC), local governments and the State Administrative Tribunal (SAT). Since 2000, the WAPC has had a State Planning Policy in place that aims to protect land required for primary production, including agriculture. This policy sets out policy objectives and measures, and deals with a range of land use planning issues relevant to rural land, and is regularly tested before SAT. For example, in 2015, the WAPC defended eight rural subdivision decisions before SAT, and the Commission's decision was upheld in every case.

From a WA perspective, the use of regulations is not considered necessary to control agricultural land uses. The WA planning system employs State Planning Policies which have proved an effective instrument that provides an appropriate level of direction and is able to be applied in a statutory sense, but can also be applied flexibly to cater for the diversity of settings in a state the size of WA. This level of direction or control is considered appropriate where the benefits of protecting rural land, and particularly priority agricultural land, outweigh any associated costs.

- *Is there scope for zones to allow a broader range of complementary land uses, while still preserving agricultural interests and recognising essential land management or conservation purposes?*

WA's State Planning policy 2.5 - land use planning in rural areas, promotes rural zones as flexible zones that can accommodate a range of land uses that may support primary production, small-scale tourism, regional facilities, environmental protection and cultural pursuits. This is an accepted practice in WA, reflective of the way rural areas and communities have operated for generations.

Copies of the WAPC's policies can also be found at :
www.planning.wa.gov.au/ruralpolicies

The question of land zoning and sub-division is always controversial although many of Western Australian agricultural regions are largely divorced from encroachment issues. Past policies that identified and protected priority areas often allowed for much smaller rural lots. Although WA's rural planning policies no longer support ad hoc rural subdivision or the use of minimum lot sizes, some local schemes still allow for very small lots. Ultimately, the marketplace will sort out relative land values and the operation of an efficient and productive rural sector, combined with a free investment environment, will do most for protecting the production base of agriculture in Western Australia.

Pastoral leases

Rangelands re-development is crucial for the future of remote communities of Western Australia and provides enormous potential for increased economic and employment opportunities, improved land management and enhanced sustainability. A thriving pastoral industry with greater business security is crucial to achieving long term growth. The reforms being pursued by within Government are designed to support pastoralists and deliver on a shared vision of prosperity and growth for Western Australia. They will provide pastoral businesses with greater security and will allow for pastoral leases of a shorter term to be extended to the maximum term of 50 years and enable leases to be renewed as a statutory right (for lessees who comply with lease conditions). These measures will facilitate investment in pastoral businesses.

The Government recognises that pastoralism can be a catalyst for economic development of Rangelands Aboriginal communities. The reforms will create economic activity that will encourage new businesses, jobs and families into the regions. Aboriginal communities will have the opportunity to participate in, and contribute to, that economic growth directly as pastoral lessees (in some cases) or through the Indigenous Land Use Agreements that will be negotiated between the rangelands lessee and the traditional owners of the land.

Land use flexibility and certainty of tenure is a high priority for regional development in Western Australia.

The Western Australian Government recognises the inflexibilities and limitations of the current pastoral lease framework and has made significant policy decisions in recent months to address these limitations, including providing pathways for pastoralists to freehold land tenure to attract investment and build agricultural enterprise. Amendments to the Land Administration Act will create a more flexible “Rangelands” lease that will improve tenure security and allow for other activities not related to livestock production such as tourism, agriculture and horticulture.

While the Rangelands lease will not be suitable for all purposes, it is expected that this improved flexibility and tenure security will encourage investment in the sector which help grow and diversify the economy.

- *Is diversification of agricultural activity unnecessarily restricted by conditions in pastoral leases?*

One of the key findings of the Southern Rangelands Pastoral Advisory Group’s (SRPAG) A Review of the Economic and Ecological Sustainability of Pastoralism in the Southern Rangelands of Western Australia, chaired by the Hon Wendy Duncan MLC in 2009, was that “maintaining restrictive approaches to land use is no longer appropriate in the Southern Rangelands and that development of diversified enterprises and land use is considered to be the most realistic means of sustaining

pastoralists and remote communities into the future". This is reflected in Recommendation Two of that Review: "Facilitate opportunities for innovation and diversification within the Rangelands through improved legislation and administration." The SRPAG Review also acknowledged that most of its findings were not only relevant to the Southern Rangelands but could apply across all of the State's pastoral leases.

These problems, identified in the 2009 Review, have led to pastoralists seeking other sources of income. Increasingly, this has been mining contract work, particularly in the Pilbara and Goldfields-Esperance regions.

Demand for alternative activities to pastoralism is increasing; activities such as carbon abatement, more intensive food and fodder production, ecological and cultural tourism, among others. Some of these activities are a higher value land use than pastoralism, while still requiring broad areas of land for which no other form of tenure currently exists. Tourism and agriculture presently require a permit under Part 7 Division 5 of the LAA, which is of limited scope. If an alternative tenure arrangement existed, such as the proposed Rangelands lease, it would enable new ventures in diverse industries to develop, leading to higher investment and employment in the Rangelands.

- *Is pastoral leasehold an effective way of facilitating efficient land use? What other approaches could be used?*

While pastoral leases may have an important role historically in the agricultural development of the regions concerned, they may not necessarily be the most appropriate instrument in the more volatile market conditions which now typify most agricultural industries. In part, this may be due to the restrictive nature of the land tenure. Pastoral leases in Western Australia are restrictive and limit the types of activities that can be undertaken on the land under the lease.

The normal operation of the market is unable to remedy the many problems extant on the Rangelands, because the market is restricted by legislation. The legislation limits or shapes market transactions in ways that are no longer optimal for pastoralists or the State. In the long term, with legislative change, there would at least be the flexibility for lessees to transition more easily between mixes of enterprises that can adequately adjust to market signals.

In Western Australia, the Department of Lands has been developing amendments to the LAA that will enable a new form of tenure to be added to the current suite of tenure available. The new tenure, a rangelands lease, provides a modern, flexible form of tenure that broadens the range of potential land uses, whereas pastoral leases require the grazing of stock except in circumstances where, in order to meet land management objectives, a lessee may destock for up to five years.

The Government has projects funded under the Royalties for Regions program which will assist in the diversification of output from the regions impacted by pastoral leases.

- *What implications (if any) does the security of tenure of pastoral leases have for lending or investment?*

The bankability of pastoral leases has been examined by the State a number of times within the last few decades. Pastoral lease tenure per se was not one of the major issues for the financial institutions. Financial institutions and pastoral lessees alike have expressed concerns around the security of investing in pastoral tenure due to concerns related to the right of renewal.

The Department of Lands is currently progressing legislative reform that will provide pastoral lessees with certainty that their lease will be renewed for the same terms and conditions, provided lessees are able to demonstrate compliance with the terms of their pastoral lease and the Land Administration Act 1997 (LAA). The Minister will no longer have discretion, assuming the lessee is compliant. Additionally, the Minister for Lands will not be able to excise land from pastoral leases in the same manner as was possible in respect of the 2015 pastoral renewals process. Should the Minister wish to acquire land from a pastoral lease, the Minister would have to comply with the compulsory acquisition and compensation provisions contained in Parts 9 and 10 of the LAA. These measures will increase the security of pastoral tenure.

The majority of financing of pastoral businesses in Western Australia has, in recent times, been undertaken by two institutions that have a significant history in servicing other aspects of the pastoral industry – namely, Wesfarmers and Elders Rural Bank. In recent times, the presence of additional banks providing finance to pastoral lessees is indicative of pastoral lease tenure being considered sufficiently secure for the provision of finance. The bankability of pastoral leases is also reflected in more equitable lending practices and terms for pastoral lessees.

As per the provisions of Part 7, Division 5 of the LAA, a pastoral lessee may apply to the Pastoral Lands Board (PLB) for a permit to undertake a diversified activity within the boundaries of their pastoral lease. Section 120, 121 and 122 respectively allow for the undertaking of irrigated agriculture, pastoral-based tourism and non-pastoral use of an enclosed or improved space.

A Part 7, Division 5 permit must be held by the registered lessee of the pastoral lease, which limits the potential for third-party investment to occur. In addition, if a pastoral lease subject to a permit is transferred, the incoming lessee must apply for the permit once they have become registered lessee. As a result, investment into the development of a permit activity is somewhat risky, as it is not possible to recoup investment at the time of transfer.

The proposed amendments to the LAA, currently being drafted, provide a mechanism for an existing permit activity to be transferred to the incoming lessee at the time of transfer. This will result in the value of the permit activity being factored into the price of the pastoral lease, ensuring a return on the investment into the development of the permit activity for the original permit holder.

- *What are the highest priority reforms for improving pastoral lease arrangements?*

The Western Australian Government, through the Department of Lands, is progressing a series of legislative reforms with respect to pastoral leases. The most important and high priority of those amendments are centred on ensuring security of tenure and the ability to maximise the value of the pastoral business. Those reforms are:

Security of Tenure

- 1) A statutory right of renewal: The amendments provide that the Minister will renew a pastoral lease for the same term if there is no outstanding breach of the conditions of the lease, the LAA or rangeland condition monitoring requirements.
- 2) Extension of pastoral leases: At present, pastoral leases can only be renewed for the same term and some pastoral lessees are operating on leases with terms as short as 18 years, while some others run for the maximum of 50 years. This has occurred as a result of a range of circumstances such as amalgamations of, and boundary changes to, leases under the repealed Land Act 1933 which stipulated that all pastoral leases would expire on 30 June 2015. Being able to extend a lease to 50 years will allow more security of tenure and facilitate investment in pastoral businesses.

Maximising Value of the Pastoral Business

- 1) Statutory transfer of permits for diversification activity: The LAA does not currently allow for a permit to be transferred to a new lessee when a pastoral lease is sold. Consequently if a new lessee wishes to continue carrying out an activity for which an existing permit has been issued, they are required to apply for a new permit. It would be more administratively efficient if the right to carry out an activity under an existing permit could be transferred from an existing lessee to an incoming lessee. This would also provide the incoming lessee with the assurance that approval to carry out activities that may be essential to the financial viability of the pastoral business is in place, thereby providing an additional incentive to invest in the Rangelands

Native Title

Native Title impacts Western Australia more than any other state in the Commonwealth with 92% of the State's land mass being susceptible to native title claim and the procedural rights afforded to both native title claimants and holders under the Native Title Act 1993 (NTA) (CTH). According to Commonwealth Grants Commission data, Western Australia expends almost 50% of the nation's total costs in administering native title.

Compliance with procedural rights under the NTA allows for the valid grant of titles and, where required, poses a significant challenge for farm businesses establishing new ventures. The comment in the Issues Paper that costs and delays can make some proposed developments unattractive or unviable is supported.

For the purposes of Commission's inquiry, compliance with the procedural requirements of the NTA is a regulatory process as defined in the Issues Paper. Compliance with procedural requirements under the NTA to progress farm business related ventures differ however from other statutory approval processes which typically have well defined steps and timeframes. Firstly, there is no statutory timeframe or guidance provided for agreement making which, depending upon the type of agreement entered, may still require additional processes under the NTA contributing to uncertainty and delay in timeframes (See Table below). Secondly, NTA compliance typically requires the proponent, in this case the farm business, to contribute up to the full cost of the native title holder/claimant as well as its own negotiating costs.

Improving the efficiency of the Native Title system is a matter of collaboration for Commonwealth, State and Territory Governments. However, in unlocking new land for development in the north of Western Australia, making Native Title more efficient and responsive to these needs is largely a matter for the Commonwealth to address through its own regulatory reform. While this should be done in consultation with the states and territories, only the Commonwealth can initiate progress.

- *How well are Native Title processes managed?*

As a general principle the Western Australian Government aims to settle native title claims in a timely manner. This provides certainty as to where native title exists and where it does not, and where it does exist who holds that native title. For a farm business or any other proponent, finalisation of this process provides certainty as to where the procedural requirements of NTA apply or not, and where these apply, it provides certainty that the "right people" are being engaged.

As at the 31 January 2016, the Federal Court has determined 57 native title claims in Western Australia which cover 49% of its land mass. Some 86 claims remain awaiting settlement by the Federal Court. The settlement of these 57 claims has resulted in the establishment of 35 Prescribed Body Corporates (PBCs) to hold the native title rights and interests of native title holders as required under the NTA.

As native title is a perpetual interest the Western Australian Government is keen for PBC's to be successful and independent organisations. However, the PBCs are neither directly funded by the Commonwealth nor have support programmes been developed to assist PBC's. These two aspects restrict PBCs to achieve a sustainable business model which limits the ability to independently engage in negotiations as part of complying with the NTA.

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Irrespective of whether a proposed development is State or proponent driven, uncertainties exist where the negotiation of agreements is required and a farm business is required to develop a negotiation strategy. The areas of Western Australia suitable for establishing a farm business would attract the right to negotiate provisions of the NTA.

Two options exist for the complying with the right to negotiate provisions of the NTA. The first option is to enter an Indigenous Land Use Agreement (ILUA), whilst the

second is an agreement under s.31 of the NTA or an arbitrated decision under s35 of the NTA where the State undertakes a compulsory acquisition of native title.

The table below gives an indication of the issues involved and respective timeframes associated with each type of agreement.

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PROCEDURAL RIGHT TO NEGOTIATE

Indigenous Land Use Agreement	Timeframe	Compulsory Acquisition	Timeframe
1. Outline Proposal		1. Notification	3 months
2. Consider elements of a benefits package		2. Right to negotiate	
3. Negotiation Protocol - Meetings - Negotiating teams - Costs - Timeframes		4. Outline Proposal 5. Consider elements of a benefits package	
6. Negotiations (including non-extinguishment principle)	No statutory timeframe	6. Negotiation Protocol - Meetings - Negotiating teams - Costs - Timeframes	
7. Execution of ILUA		7. Negotiations	No statutory timeframe
8. ILUA Authorisation (associated costs)	No statutory timeframe	9. Execution of agreement	
9. Lodging ILUA with NNTT		10. Lodging agreement with NNTT	
11. Notification	Statutory 3 months period for lodging objections	11. Grant of title NB. If no agreement reached, the matter can be referred to NNTT for arbitration (s35 NTA). NNTT decision is appealable to the Federal Court	
12. Registration of ILUA	Subject to withdrawal/dismissal of any objections		
13. Grant of title			

The success of the Western Australian Government's Rangeland's agricultural development initiatives will not be solely dependent upon adequate resourcing for the Native Title process. However, a failure to deal with this systemic issue will

certainly limit their effectiveness. Accordingly, WA Government encourages the Commonwealth to consider ways in which the Native Title system can be more equitably and securely funded.

- *How do Native Title processes affect decisions relating to current or future land use?*

Native title and the NTA are permanent elements within the Australian legal framework and compliance with the procedural requirements of the NTA to engage in negotiation and agreement making do affect land use decisions.

For new or future developments proposals, the issues outlined above are all relevant. For existing developments, the situation is more varied. Where native title does not exist because of extinguishing tenure (such as the freehold farmlands in the State's South West), no impediment exists to expanding businesses or developing new ones. Where an existing business exists where title (eg a lease) was negotiated by agreement under NTA, native title may revive at the expiry of that lease which will require a further negotiation if the farm business wishes to continue.

If a farm business wishes to expand an existing operation into an area where native title exists, compliance with the NTA would be required.

- *What scope exists to reduce any unnecessary burden imposed by Native Title processes and how should regulation be reformed to give this effect?*

Through its procedural rights, the NTA fulfils its objective of protecting and preserving native title rights and interests very well and little scope exists to introduce change that would not detract from that objective. Any changes that can be achieved to provide greater certainty into the procedural requirements would be beneficial.

One aspect that could be addressed is making amendments to the Low Impact provisions of the NTA (Subdivision 24LA). As it stands, Subdivision 24LA is inoperative where it has been determined that native title exists. This means that farm businesses and proponents in general cannot rely on this Subdivision to conduct feasibility studies for proposed projects not supportable under existing legal arrangements. Other than compulsory acquisition, negotiation of an ILUA is the only procedural avenue available under the NTA. Pursuing such an avenue would typically be unattractive for a farm business because of the technical nature and cost involved in compliance. Subdivision 24 LA could be enlivened by introducing the procedural rights of being notified and given the opportunity to comment as elsewhere in the NTA.

As mentioned above, the Commonwealth providing more direct financial support to PBCs to establish independent operations and undertake agreement negotiations would also be of assistance.

Environmental Protection

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) outlined in the Productivity Commission Issue Paper aims to “provide a streamlined national environmental assessment and approvals process.”

The Western Australian Government supports the concept of a “one stop shop”, and views that it is essential that Governments are aligned to avoid unnecessary duplication of assessment, conditions, compliance and reporting which add time and cost to the agriculture industry.

A balance must be achieved in terms of reducing the regulatory burden and ensuring adequate protection of the environment. Through coordination between federal and local/state governments which possess greater local knowledge, it is expected these two conflicting objectives can be satisfied.

- *Do environmental protection regulations particularly affect certain businesses or businesses in certain locations?*

Depending on the location or the nature of the activities being undertaken, environmental protection regulations may require businesses to put in place cost-intensive monitoring, reporting and auditing schemes to ensure environmental values are not affected by their operations. This additional cost will be justified where environmental values cannot be maintained and protected in other ways. However, application as a matter of course would represent a significant and unnecessary impost on agri-business that would be unlikely to result in better outcomes for the environment.

The Government, through the Department of Lands, is developing an integrated Rangelands Condition Monitoring program implemented through an Objective Rangelands Business Information Tool (ORBIT). ORBIT will use newly available satellite data augmented by photographic evidence provided by land managers as a basis for rangeland condition monitoring across the rangelands estate. The vegetation cover and trend information collected will provide a solid foundation to support evidence-based decision making on land use planning and land management. Once operational, this may enable more precisely targeted environmental regulatory activity to areas where maintenance of land condition requires this attention. It will also provide some baseline data in advance of project development to assist in the identification of potential environmental risks associated with particular proposals.

- *Can the burden imposed by environmental protection regulations be reduced by changing the regulations or the way they are administered?*

Amendments to the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (Native Vegetation Clearing Regulations) were gazetted in December 2013.

The changes to the Native Vegetation Clearing Regulations contribute to reducing unnecessary regulatory burden on land owners and land managers, without resulting in any significant risk to the environment. The changes comprise:

- the time for owners and occupiers to maintain previously lawfully cleared areas for pasture, cultivation or forestry, without a clearing permit was increased from 10 to 20 years; and
- the total area allowed per financial year, per property, for prescribed limited clearing was increased from one hectare to five hectares. Limited clearing means clearing to construct a building, clearing for firewood, clearing to provide fencing and farm materials, clearing for woodwork, clearing along a fence line, clearing for vehicular tracks, clearing for walking tracks, and clearing isolated trees.

Wider adoption of risk-based approaches to environmental regulation based on objective, well-understood criteria applied consistently between State and Commonwealth agencies would assist to:

- 1) Streamline the process for projects requiring separate State and Commonwealth approval;
- 2) Enable proponents to prepare a single set of documents for both State and Commonwealth reporting purposes; and
- 3) Reduce project risk by eliminating inconsistency between State and Commonwealth assessment criteria.

One of the keys to effective adoption of risk-based regulation is ready availability of reliable, region-scale environmental data. The Rangelands Condition Monitoring program will contribute much-needed information for Western Australia's arid and semi-arid lands.

- *Are there more effective approaches to environmental protection adopted overseas, or in other parts of Australia, that should be considered?*

The Commonwealth of Australia and Western Australia have entered into a bilateral agreement under the Environment Protection and Biodiversity Conservation Act 1999 (Cwth) (EPBC Act) relating to environmental assessment (assessment bilateral agreement). Specifically, the agreement includes the clearing permit assessment process under Part V Division 2 of the Environmental Protection Act 1986.

The bilateral assessment agreement allows the State to conduct environmental assessments on behalf of the Commonwealth, removing duplication including the

need for a separate Commonwealth assessment. The bilateral assessment agreement commenced on 1 January 2015.

The agreement can be viewed on the Department of Environment Regulation's website

www.der.wa.gov.au/our-work/clearing-permits/189-assessment-bilateral-agreement and on the Commonwealth's Department of the Environment website www.environment.gov.au/protection/environment-assessments/bilateralagreements/wa#assessment

Access to Technology

The WA Government's Agriculture Sciences and Research and Development fund supported by \$26.1 million Royalties for Regions funding as part of the \$300 million Seizing the Opportunity Agriculture (STOA) initiative is a project aiming to generate long-term productivity improvements in agriculture through highly targeted research, development and extension. The program aims to achieve productivity gains of more than 2 per cent per annum by identifying new practices and technologies needed to sustain industry expansion.

Productivity gains generated through research and development form part of the Federal Government's innovation agenda. The \$1.1 billion federal package unveiled in December 2015 seeks to facilitate a cultural shift in the Australian economy as the mining industry continues to slow, driven by falling commodity prices and slowing foreign demand. Through targeted research and development, it is expected the regulatory burden will be reduced for the Western Australian agriculture industry as efficiency gains are achieved. Through the identification of key regulatory issues, targeted research and development will aim to overhaul areas characterised by an unnecessarily large amount of "red-tape".

The Western Australian Government has sought to enhance the farm sector's access to new technologies through direct investment. For example, the Government has provided \$23 million to introduce Doppler radars to the wheatbelt and is investigating options to extend mobile phone coverage across farm businesses in the South West of the state. Initiatives such as these, in activities usually the responsibility of government, are needed to complement any regulatory changes to ensure the sector remains internationally competitive.

- *What are the benefits and costs of some jurisdictions specialising in GM free products relative to widespread cultivation of GM crops?*

Repeal of the *GM Crops Free Areas Act 2003* was affected with DAFWA as the lead agency in the repeal process. The repeal bill was submitted to Parliament in November 2015, for debate during 2016. The original intention of the Act was to

ensure WA markets were not adversely affected by the production of GM crops. The ability of industry to successfully segregate GM canola since its introduction in 2010 has demonstrated that this legislation is no longer required.

Amendments to *the Gene Technology Act 2006* will result in DAFWA replacing the *WA Gene Technology Act 2006* with a new Act applying the Commonwealth *Gene Technology Act 2000*. Implementation of this legislative change has been delayed until the *GM Crops Free Areas Act* is repealed.

Benefits of the amendments ensure that WA is consistent with national legislative scheme to protect safety and health of people and the environment by regulating dealings with GMOs (as agreed under Intergovernmental Agreement on Gene Technology 2001). In particular, benefits will arise from reduced administrative costs and delays, and reduce confusion (ambiguities) and uncertainty (and potential compliance issues) created under the current system.

Access to Agricultural and Veterinary Chemicals

Western Australian Government notes the Productivity Commission July 2008, Chemicals and Plastics Regulation, Research Report and its recommendations 8.1 and 8.2. Subsequently, COAG directed PIMC to generate a proposal for a single national framework to improve efficiency and effectiveness of regulation of agricultural and veterinary chemicals. A Decision Regulation Impact Statement (DRIS) on a National Scheme for Assessment, Registration and Control-of-Use of Agricultural and Veterinary Chemicals was produced in 2013.

Option D of the DRIS supported PC recommendation 8.2 and had a similar benefit cost ratio as the DRIS preferred option, C1. The advantage of option D, which was not considered in the DRIS, was that it would be fully funded by the APVMA recovering, "...additional costs through a mix of charges and levies."

Over the last 20 years it is noted that state and territory governments generally have had a reduced capacity to monitor and enforce compliance. The current Productivity Commission Inquiry into Regulation of Agriculture should use the opportunity to revisit this option of vertical integration of Agvet chemical regulation.

- *Does the regulatory system for agvet chemicals effectively align regulatory effort with risk? How can a better system be achieved?*

The current Australian Pesticides and Veterinary Medicines Authority (APVMA) registration process for Agvet chemicals is effective and sufficient in establishing levels of exposures of the public and limiting risks to health.

The APVMA is refocussing its operations to better meet the needs of the farming sector, while continuing to ensure that Australians have confidence in the safety of the agricultural and veterinary (agvet) chemicals they use. The APVMA is currently re-aligning its regulatory effort to be more proportionate to the regulatory risk and

implementing ways to streamline the registration process to ensure Australian farmers have access to the chemicals they need in a more timely manner.

The WA Government encourages the APVMA to pursue greater efficiency in its processes as chemicals represent a significant component of both WA farm management tools and business cost structures.

The *Aerial Spraying Control Act 1966* and *Aerial Spraying Control Regulations 1971* are being updated. The benefits of this policy change will include removal of:

- DAFWA examination of pilot chemical rating
- sending spray records to DAFWA
- conditions on transport and use of certain chemicals in hazardous areas
- compulsory insurance/security.

Other benefits will include:

- recognition of industry training/competencies
- pilot licence renewal changed from annual to every 3 years
- recognition of unmanned aerial vehicle operators.

Repeal of both the Agriculture and Related Resources Protection Act 1976 (Sections 83A and 106A) and ARRP (Spraying Restrictions) Regulations 1979 which will lead to the removal of government red tape allowing farmers to make decisions based on best practice and the registered pesticide label.

- *Is there scope for Australian regulators of agvet chemicals to recognise the tests and standards developed by their overseas counterparts?*

Although there may be scope to recognise standards developed by overseas counterparts, the WA Department of Health has recommended caution in the adoption of overseas data, testing results and standards in the current APVMA registration process. They suggest that ethical and objective verification of data, testing results and standards cannot be necessarily guaranteed with some overseas counterparts.

It is noted that the Federal Government's Industry Innovation and Competitiveness Agenda has set the guiding principle that if a system, service or product has been approved under a trusted international standard or risk assessment, Australian regulators should not impose any additional requirements unless it can be demonstrated that there is a good reason to do so. All Commonwealth (including the APVMA) regulatory standards and risk assessment processes are being reviewed against this principle.

The APVMA has developed a consultation draft to articulate how international data, standards and assessments can be better utilised as part of the risk assessment process that it is required to undertake as part of the approval of an active constituent, registration of a product, approval of a label or the reconsideration of an existing agvet chemical.

If concerns over health impacts are satisfied ethically and objectively in overseas testing, the recognition of overseas testing would appear to offer productivity benefits from assisting new products to enter the market more quickly and with lower financial overheads.

Water

The State Government has demonstrated a commitment to red tape reduction in the supply of water to the agricultural sector with a number of initiatives, which have included the following examples.

Through Water Online, the Department of Water has made it possible for water users, including those on the agricultural sector, to apply online for water licencing and land use planning assessments. Water users can now obtain information from the Department on water resources much more rapidly than previously and online applications have reduced the time taken to apply for or renew a licence.

Following an extensive consultation process, which included significant input from the agricultural sector, new water resources management legislation was approved for drafting in 2015. This legislation consolidates and modernises six out-dated water Acts, providing greater certainty and security for water users, allowing for water planning and allocation to be better tailored to meet the needs of water users in a specific catchment and will simplify licencing and trading, saving time and money for water users.

Water for Food is a \$40 million project lead by the Department of Water as part of STOA. The program will encourage production and efficiency improvements in existing irrigation districts through innovative and targeted water resource management and enhance water availability to support the expansion of existing and new irrigation precincts in Western Australia. Department of Lands is also involved in this project delivering land tenure solutions for new irrigation precincts. The water for food program is a cross-government initiative that is seeking to reduce the regulatory burden placed on irrigated agriculture businesses in relation to water and land access.

Water for Food is a four-year program funded by the Royalties for Regions program and is a key component of the State Government's broader Seizing the Opportunity in Agriculture (STOA) initiative. This initiative is designed to boost to regional Western Australian communities by developing and diversifying the WA agriculture and food sector. The programme seeks to reduce barriers to agricultural investment and expansion, particularly land tenure constraints. Government will do this will do this by:

- Providing the tools to enable land tenure change that will build on the aspirations of the State Government's rangelands reform agenda of increasing opportunities to diversify land use.

- Assisting proponents seeking more secure tenure to underpin high-value irrigated agriculture where water is available.
- Creating appropriate tenure for business to be conducted in granting a long-term lease and possibly freehold tenure.
- Offering an opportunity for involved agencies to develop policy and supporting materials that will assist State Government's decision-making.
- Providing other opportunities such as the creation of employment and economic development pathways for members of the aboriginal communities.

The Department of Lands is the lead agency for the Land Tenure Pathway for Irrigated Agriculture (LTPIA) Project, which aims to assist proponents to obtain more secure land tenure that supports high-value irrigated agriculture.

The Water for Food program aligns with the Government's intent to meet election commitments to strengthen private property rights and will remove land tenure constraints, as well as help build capacity to generate significant agricultural economic activity across the State. The LTPIA Project also aligns with other programs in trying to reduce the regulatory burden in Western Australia by outlining a clear pathway for proponents seeking to develop land for irrigated agriculture.

- *Are there aspects of the water market that are imposing an unnecessary regulatory burden on farm businesses? If so, what are they?*

Access to adequate supplies of appropriate quality water is an important ingredient to agricultural development. Through the Water for Food Programme, Western Australia is seeking to accelerate surface and groundwater investigations in regions where this baseline data is patchy or unavailable.

The Water for Food initiative is a four-year \$40 million Royalties for Regions funded inter-agency program being led by the Department of Water. The new, secure water supplies it identifies will boost regional Western Australian communities by enabling the development and diversification of the agriculture and food sectors.

Once identified, access to these new supplies will be managed by the Department of Water (DoW). Balancing the competing agricultural, mining, environmental and social use demands on the overall water resource will undoubtedly require the imposition of regulation. It is likely that this will result in some unavoidable impost on agri-business and other end-users, such as licence fees or lower than desired allocations.

Water quality standards should be based on evidence base approaches without prescriptive regulations. The level of water quality need to be determined based on environmental and public health risk regardless of the regulatory burden. For example, level of treatment of recycled water used in agriculture should be fit for purpose for the intended end-use(s).

- *What aspects of water regulation are having a material effect on the competitiveness of farm businesses and the productivity of Australian agriculture?*

In many regions of Western Australia, agri-business development and competitiveness is affected more by the lack of known, secure water supplies than any regulation of those supplies. Non-traditional water sources, such as the mine-dewatering streams targeted by the Pilbara Hinterland Agricultural Development Initiative, may provide a solution in some regions. However, such sources are generally localised and may be limited in both duration (for example, be available only during a mine's operation), quantity and quality. The Water for Food initiative is designed to address this primary barrier to agricultural development across broad regions by increasing the quantity and quality of baseline data on water supplies.

Transport

The Infrastructure Audit and Investment Fund is a \$77 million project lead by the Department of Regional Development (DRD) as part of STOA. The Fund will support infrastructure projects that improve productivity and transport efficiency and other infrastructure constraints to the expansion of the agriculture and food industries across the supply chain.

By improving the delivery of infrastructure, including key road and rail network upgrades, this project will reduce the regulatory burden imposed on small agricultural businesses through a more efficient and productive supply chain, reducing the need for regulation based on conditions. To ensure all proposed infrastructure projects contribute to reduced regulatory burden, projects will be required to demonstrate how they either support existing agricultural activities or will result in a transformational change in WA agrifood.

- *Do transport regulations impose unnecessary burdens on agricultural producers?*

Road

WA is committed to reducing the burden on industry resulting from duplicate and inconsistent regulations. WA actively participates in the national transport reforms where clear benefits to the State can be demonstrated. One example of this commitment is WA's recent transition to the Office of the National Rail Safety Regulator (ONRSR) which occurred on 2 November 2015, in line with the 2011 Council of Australian Government's agreement on the National Rail Safety Regulation and Investigation Reform. The WA Parliament passed legislation to establish the ONRSR in WA and to repeal the existing state based regulation,

effectively reducing the duplicate and inconsistent regulation of rail safety throughout Australia (except Queensland where the Rail Safety National Law is yet to be passed).

A suggestion for improving regulation affecting the agriculture sector has been identified through the State Government's red tape web portal. The Western Australian Farmers Federation recently suggested that truck registration details required to participate in the Harvest Mass Management Scheme are repetitive and onerous. Specifically, the registration form requires the truck licence plate number as well as details of axles and maximum weight load, which they argue is already linked to the licence number. In addition, the information must be supplied for each load, rather than once upon deposit of the first load the State Government is investigating capacity for introducing efficiencies in these requirements.

WA is not a signatory to the National Heavy Vehicle Regulator (NHVR) as from the State's perspective there are limited benefits and efficiencies to be gained the WA road transport industry by implementing the Heavy Vehicle National Law Act (HVNL) in WA, particularly due to the restrictive access conditions imposed under the national regime. The HVNL (regulation 124) requires each state and local government to provide access consent for roads under its jurisdiction before an access permit is approved by the NHVR. The legislation allows local governments up to 28 days provide access consent. These timeframes do not meet the requirements of primary producers or the transport and logistics industry.

In WA, the Commissioner of Main Roads has the power to issue permits and does not require local government approval to do so. This provision allows WA to ordinarily issue permits within a 24 hour period. Main Roads WA has collaborated with local governments to develop a series of networks and pre-approved routes which are matched to the various heavy vehicle types, rather than seek individual approvals local governments, who do not have the resources to process permit requests.

Local transport operators have expressed a preference for the WA permit processes due to fast and reliable permit assessment times which improve the flexibility of industry. As farmers may be required to move freight without significant prior notice, some form of delegation of access decision power from local governments to the NHVR or state road agencies could provide benefits for agricultural freight nationally.

WA has established the Agricultural Vehicles Advisory Committee (AVAC) to identify regulatory and administrative impediments to primary industry and determine a means to rectify them. AVAC brings together stakeholders from the farming and transport industries along with state and local government. The committee has been instrumental in ensuring vehicle and machinery allowances meet the requirements of the agricultural community, and AVAC continue to provide advice to government on potential improvements for the sector.

- *Are there transport regulations that duplicate or are inconsistent with other regulations?*

WA has retained state-based legislation to promote a safe and sustainable road freight transport industry by regulating the relationship between persons who enter into contracts for the transport of goods in heavy vehicles and persons who hire them to do so under the *Owner-Driver (Contracts and Disputes) Act 2007*. This state-based regime operates in addition to the national *Road Safety Remuneration Act 2012 (Cwlth)* which establishes the Road Safety Remuneration Tribunal (RSRT).

The main reasons WA has chosen to retain the state-based regulatory regime is for the benefit of WA industry, in that the approach to dispute resolution under the WA Act is faster, less formal, less costly and more readily accessible than that offered by the Road Safety Remuneration Act 2012, given the vastness of the unique WA road network. It should be noted, however, that decisions made by the National Road Safety Remuneration Tribunal (RSRT) may override decisions made by the WA Tribunal due to the federal law prevailing in the case of any inconsistency.

The Department of Transport (WA) undertook a review of the *Owner-Driver (Contracts and Disputes) Act 2007* in 2014. The review found that the legislation, the Road Freight Transport Industry Council and the Road Freight Transport Industry Tribunal are all meeting their requirements under the *Owner-Driver (Contracts and Disputes) Act 2007*. Feedback from the review indicated that industry believe the legislation is helping to boost the safety and sustainability of the road transport industry and that the industry supports its continuation, rather than presenting an unnecessary or duplicated regulatory burden.

The RSRT has powers to issue orders that may duplicate state legislation, particularly in relation to occupational health and safety and road law requirements. Some requirements, such as the contract provisions and road safety plans found in the Road Transport and Distribution and Long Distance Operations Road Safety Remuneration Order 2014, may require administrative resources for farmers who contract transport services and the requirements may not be well understood by the farming community.

- *Would alterations to the HVNL offer material benefit in terms of reducing regulatory burden on farmers? At what cost?*

WA is not a signatory to the NHVR and has not adopted the HVNL. The State's existing regulatory framework provides flexibility for local industry and is strongly supported by industry. If WA chose to adopt the national law it could create additional regulatory burden for farmers, particularly in relation to road access and heavy vehicle driver fatigue.

Given the size of the state and the long distances between producers and markets, a flexible fatigue management system is required in WA. In contrast with jurisdictions operating under the HVNL, fatigue management requirements form part of

occupational health and safety law, as opposed to transport law. The requirements can be found in the Occupational Health and Safety Regulations (1996) and the requirements detailed in the Fatigue Management for Commercial Vehicle Drivers Code 2004 (the Code).

The Code applies to all commercial vehicles, which include vehicles used to carry passengers for hire and reward, and vehicles with a Gross Vehicle Mass of more than 4.5 tonnes. A single set of working requirements is available to commercial vehicle operators, providing consistency for industry. Restricted Access Vehicle (RAV) operators are also required to enrol in the WA Heavy Vehicle Accreditation Scheme, which includes monitoring fatigue management systems in order to ensure compliance with WA requirements.

The HVNL offers three separate allowable working hours, depending on the operators business systems; Standard Hours, Basic Fatigue Management and Advanced Fatigue Management. There is a significant difference in the available work and rest times in WA, as opposed to what is offered under the HVNL. The table below provides an indicative comparison of allowable work hours:

Maximum Work Time in :	WA	Standard Hours	BFM	AFM*
14 day period	168 hours 2 days rest -- day is 24 continuous hours	144 hours 4 night rest breaks (2 consecutive)	144 hours 24 hours rest after 84 hours work	154 hours 288 hours (28 days) 4 x 24 hours periods in 28 days
7 day period	N/A	72 hours 1 x 24 hour rest period	N/A Not to exceed 36 hours of night/long	N/A
3 day period	45 hours Minimum non work time of 27 hours	N/A	N/A	N/A
24 hour period	17 hours 7 hours continuous rest	12 hours 7 hours continuous rest	14 hours 7 hours continuous rest	15.5 hours 17 hours outer limit 7 hours continuous rest
12 hour period	N/A	10 hours 1 hour rest in 15 min blocks	11 hours 1 hour rest in 15 min blocks	N/A
6 hour period	After 5 hours 30 min rest can be broken down into 10 min then 20 min rest	After 5 ¼ hours 15 min rest	After 6 hours 15 min rest	After 6 hours 15 min rest

The national system is both more complex for transport operators to comply with, and offers less flexibility for industry to manage working hours. While the NHVR have developed Advanced Fatigue Management templates designed to suit specific industry segments, the first of which is The Livestock Transport Fatigue Management System, released in 2015. Feedback from stakeholders indicates that the templates still fail to provide industry with the flexibility required. The livestock industry has consistently advocated for operating parameters in line with the current WA arrangement.

- *How could access decision-making by road managers be improved to allow freer movement of agricultural produce?*

WA's access regime and access assessment processes are generous, relatively simple for users and efficient for industry. Although cross border road freight movements into WA by road are low, WA is participating in national projects with the objective of harmonised access arrangements.

WA road access levels reflect the size of the state and the need for efficient road transport solutions to facilitate remote and regional economic activity. WA has developed notices to replace single move permits for Restricted Access Vehicles that allow vehicles to access a network of pre-approved roads. In order to access the notice, transport operators must enrol in an accreditation program and apply for a period permit. Main Roads continues to develop the accessible network and the range of products covered by notices in order to simplify access requirements and reduce the regulatory burden for transport operators and their customers. WA actively engages with the transport providers and farmers to ensure access arrangements meet the needs of the farming community.

The NHVR's strategic vision is to work with jurisdictions and local governments to develop a series of networks and pre-approved routes similar to WA. In WA, with 139 local governments, this process commenced in 2004 and has been an ongoing initiative to ensure the networks meet industry requirements. The networks include routes and roads that range from strategic freight routes across numerous local government boundaries to "last mile" farm gate access. Many WA regional local governments do not have the expertise to assess heavy vehicle routes so the focus has been on developing agreed guidelines, education, training, joint route inspections and working together at a grass roots level. It is acknowledged that some progress has been made at a national level by the NHVR working strategically with jurisdictions and local governments on pre-approvals but it is very resource intensive work with over 400 local governments to engage.

WA has worked with the agricultural and transport industry representative groups to develop schemes for specific commodities. For example, the Harvest Mass Management Scheme (HMMS) offers a 10% extra mass allowance for registered grain receipt operators. The scheme was developed in consultation with industry and grower representatives to cater for the loading difficulty caused by the natural variation of grain density and to provide flexibility in the movement of grains from

paddock to receival facilities. The allowance offered by the HMMS assists gram receivers and transport operators to comply with regulatory vehicle mass limits. There are also schemes in place to assist the transport of livestock and other commodities.

- *Is there scope to reduce the burden of rail, port or air freight transport regulations on farmers?*

Rail

Currently, the WA Rail Access Regime (WARAR) facilitates access to the WA freight rail network. The routes regulated under the WARAR are noted in Schedule 1 of the *Railways (Access) Code 2000* (the Code). The WA regulated rail routes include the grain rail network used by Cooperative Bulk Handling Ltd (CBH) to transport grain in the South West of WA.

The State Government (Departments of Treasury, Finance, Transport and State Development) are jointly considering whether to conduct a broad policy review the WARAR to assess its costs and benefits early 2016. This review will enable the State Government to determine whether a WA access regime is beneficial and cost-effective. A more informed assessment of the 'burden of rail transport regulations on fanners' can be provided following the conclusion of this review.

The interstate route west of Kalgoorlie to Kwinana is regulated under the WARAR (green line in the image) while the route east of Kalgoorlie are owned by the Australian Rail Track Corporation (ARTC) (yellow line in the image). The Economic Regulation Authority (ERA) has recommended in its recent review of the Code that the State Government consider options to bring interstate services currently regulated under the WARAR to ACCC approved ARTC Access Undertaking. The aim is to achieve consistency in rail access regulation for the interstate services. Common regulation for interstate services may potentially streamline access regulation requirements.



Ports

Western Australia’s port authorities do not generally deal directly with farmers individually. Rather, port authorities operate as Government Trading Enterprises under the *Port Authorities Act 1999*. As landlords, they mainly deal with large scale export companies who lease port land (after receiving Ministerial consent), and of course shipping companies and/or shipping agents.

Port authorities do, however, interact with farmer cooperatives, including the CBH for grain, and port infrastructure is used for the export of agricultural products, and import of agricultural equipment, fertilisers and other items.

This means that any port authority services or fees form part of the supply chain costs. We are not aware of any concerns raised by farmers regarding port charges or fees being high due to undue regulation. However, the Mid West Ports Authority (MWPA) noted that CBH and growers had registered some concerns about port charges which are being actively addressed by the MWPA.

In regards to the regulation of ports, the commercial model for Western Australia's port authorities has operated very well since its inception in 1999, and has been reviewed and aligned with reforms from the WA Ports Governance Review.

The *Ports Legislation Amendment Act 2014* included legislative amendments to amalgamate seven of the eight State port authorities into four regional ports authorities, plus Fremantle Port Authority which remained unchanged. The legislation also enables port authorities to manage more than one port and confirms that ports can operate 24 hours day.

It is expected that port customers will benefit from these reforms through use of port infrastructure, improved investment decisions, economies of scale benefits for service provision and enhanced corporate governance. The Department of Transport are happy to provide further information on these amendments if of assistance.

WA is considering regulatory amendments to the Coastal Pilotage Regulations whereby the compulsory use of pilots will change as follows:

- *Port Authorities Regulations 2001*: to reflect a change from 150 gross registered tonnes to 35m; and
- *Shipping and Pilotage (Ports and Harbours) Regulations 1966* to a change from 500 gross tonnage to 35m.

Another matter which needs to be considered is the biosecurity regulations apply to ports from both the Commonwealth and also the State. The Commonwealth is currently reviewing the draft Standards for ports and airports, relating to the supporting regulation under the *Biosecurity Act 2015* that will come into force in June 2016.

The regulations prescribe that at 'first entry ports', there must be:

1. Procedures in place at ports to provide for biosecurity measures;
2. Adequate facilities and amenities available for biosecurity officials biosecurity officers; and
3. Appropriate procedures at the port to ensure biosecurity is identified, and are notified, and risks are managed.

The Commonwealth Regulations are deliberately outcomes focused, rather than prescriptive to enable flexibility and to accommodate variations in business across different locations and biosecurity risks. The regulations also recognise that different approaches to biosecurity will be equally effective. The Commonwealth information also clearly states that all international vessels be required to moor at a first point of entry, which we take to mean also includes recreational vessels too. The Act commences on 16 June 2016, but there will be a three year transitional period to 2019 which will enable port authorities to work with the Commonwealth during the development of the criteria. WA ports are working through the national (Ports Australia) body to have input to this review.

Given the context and importance of biosecurity, these requirements do not appear onerous given many WA ports provide the first contact point for the purposes of quarantine and require procedures in place to deal with biosecurity (as per their function of managing the port environment).

Aviation

Freight represents a very small component of air services provided Western Australia.

The Commonwealth regulates air freight for and safety purposes. The State regulates certain passenger routes and passenger airfares. The State does not impose any regulation on air freight rates either directly or indirectly.

The State, through the Department of Transport, regulates regional air routes by issuing annual aircraft licences to airlines under the *Transport Co-ordination Act 1966*. The *Transport (Exemptions) Order 1985* provides for exemptions to aircraft licences for some agriculture related activities. For example, exemptions exist for "aircraft used solely for the purposes of aerial spraying, crop dusting, seed sowing, fertiliser distribution" and other services (refer item 16, Part 2 of the Order).

In addition, in late 2015 the WA Cabinet approved an amendment to the *Transport Co-ordination Act 1966*. Legislative changes which may be considered by the WA Parliament in 2016 would seek to extend the validity of aircraft licences for up to five years. The longer term of aircraft licences will reduce the administrative burden and costs of business operations to airlines which in turn could have an indirect positive impact on the agriculture sector.

- *Are there aspects of coastal shipping regulation that are an unnecessary burden on farm businesses?*

The WA Department of Transport administers a Coastal Shipping Permit system, whereby intra-state coastal shipping is regulated. Permits are requested by shipping agents for a fee. There are no records of farming product or agricultural products/equipment being transported intra-state by sea, within WA waters.

Animal Welfare

Management of animal welfare across all domestic livestock is a high priority for the WA livestock industry. Live exports form a critical component of the sheep and beef supply chains and animal welfare is a high profile area that needs to be correctly managed in a timely manner. Any cost impositions from unnecessary regulation, based on emotion as opposed to that necessary to ensure the humane treatment of animals, will have a disproportionately larger impact on the export focused West Australian industry.

Trade barriers are not currently in place based on animal welfare issues, but might be a possibility, while the Australian Government has demonstrated preparedness to respond in an ad hoc manner to incidences.

Good management of animal welfare requires close liaison between federal, state and local government to limit damage done to both image and business relations while protecting the welfare of animals. Each state has different regulations, including roles of the relevant RSPCA, a matter which could benefit from greater standardisation. WA Government has worked hard to distinguish between the role of DAFWA and RSPCA within domestic animals and pets, respectively.

- *Do existing animal welfare regulations (at the Australian and state and territory government levels) efficiently and effectively meet community*

expectations about the humane treatment of animals used in agriculture production?

The *Food Regulations 2009* adopts the Australian Standard for the Hygienic Production and Transportation of Meat and Meat Products for Human Consumption (AS 4466); the Australian Standard for Hygienic Production of Rabbit Meat for Human Consumption (AS 4466); the Australian Standard for Hygienic Production of *Ratite* (Emu/Ostrich) Meat for Human Consumption (AS 5010); the Australian Standard for Hygienic Production of Crocodile Meat for Human Consumption (AS 4467); and the Australian Standard for the Construction of Premises and Hygienic Production of Poultry Meat for Human Consumption (AS 5011).

These Australian Standards refer to criteria to minimise the risk of injury, pain and suffering of animals in primary production. The Department of Health undertakes food safety audits of meat, game and poultry production and processing, against the Australia Standards. Where there are issues identified at audit with regard to animal welfare, the Department of Health, authorised officer will address the issue with the food business (primary producer), and inform the Department of Agriculture and Food, the appropriate agency to investigate reported animal welfare matters further.

- *Do animal welfare regulations materially affect the competitiveness of livestock industries, and, if so, how?*

Ad hoc application of policy in animal welfare matters has a disproportionately high impact on the Western Australian livestock industry. The regulations, and the subsequent access to markets, need to be applied consistently so that industry has some certainty in the matter.

Biosecurity

WA has distinct requirements for biosecurity regulations which have driven the need for variations to arrangements to those applying in the eastern states of Australia. WA, because of its relative isolation has pest and disease free status that does not exist in the eastern states. This gives the State access into valuable and emerging markets. Adopting uniform national biosecurity regulations is not necessarily in the best interests of Western Australia WA Biosecurity Council made a formal submission to the Senate Enquiry into this issue along these lines.

The WA Government would not want to see the *Biosecurity Act 2015* applied in a manner which undermined the integrity of local biosecurity provisions and compromised attempts to maintain disease or pest free status and retain market access. Consequently, Western Australia has regulation which can apply in the event of an outbreak in other parts of Australia.

The regulatory environment applying to food manufacturing inhibits the ability of industry participants, particularly SMEs, to access export opportunities. The inconsistency in regulation of domestic and imported food and the costs associated

with the regulation of export activity act as a strong deterrent for export market development.

The compliance burden of export regulation is potentially a more significant part of business costs for smaller than for larger exporting businesses. Export documentation requirement and fees charged by AQIS are the same for all businesses in an industry, regardless of the size of the exporting business. The duration of the export certification may, however, be shorter for smaller businesses, but there is no guarantee of this.

Compliance with Australian Quarantine Inspection Service (AQIS) legislation, compliance monitoring and audit requirements are often a disincentive to export market development, particularly for new entrants and SMEs. Industry needs to work with government on a harmonisation agenda for food safety legislation. Further research is required in this area.

Jurisdictional overlaps and export process delays ultimately act as a disincentive to invest or expand food businesses into international markets. Due to the complexity of food export legislation, the 'perception' of the regulatory cost burden may be greater than the true cost as some businesses do not understand the process or their obligations. Government has a role in the educative process both at the business and administrative regulatory level to build a common understanding.

Biosecurity continues to be a major focus of the Western Australian government's agricultural strategy, in particular because it affords the local industry a competitive advantage in export markets. Of on-going concern, however, in seeking to address Federal Government changed policies or priorities, where the State has involvement or responsibility, has been the lack of funding to support the changes.

The Boosting Biosecurity Defences project is led by the Department of Agriculture and Food WA (DAFWA) and has received funding of \$20 million under the Royalties for Regions program. It seeks to build the capacity of the agricultural industry, rural community and government, to manage biosecurity risks to protect the value, market access and reputation of Western Australian agriculture. Through cooperation between industry, community and government, the efficiency of biosecurity will be enhanced, ultimately ensuring a reduced regulatory burden is imposed on businesses in a biosecurity high risk category.

This program has been endorsed by the WA Biosecurity Council and will provide strategic advice and independent assessment of key programs and activities. It is envisioned this will adhere to the "one stop shop" concept with regards to regulation and biosecurity.

- *What improvements could be made to government export certification processes?*

Phytosanitary certification and fumigation regulation requirements are considered with the WA agri-food sector, not aided because communications with the Federal Department of Agriculture are viewed as being cumbersome and time consuming.

The time and costs associated with gaining export biosecurity clearance for newer products, such as lupin foods or quinoa, are considered barriers to entry for export activities, particularly for smaller enterprises which typify the Western Australian sector. Small scale food businesses typically find the certification process to be daunting and a disincentive to export. A potential solution could lie in having a clearer understanding of the “Harmonised System” code for the product noting, however, that Australia cannot impose its views as to the appropriate code on the importing country.

If Western Australia is able to declare that it has Areas of Freedom from specific pests, weeds and diseases, these could be recognised with Federal Government regulatory processes for the purpose of export as opposed to requiring businesses providing individual certification for each consignment.

Industry considers that a factor which contributes to the costs associated with export regulation is the skill level and breadth of knowledge of enforcement staff in AQIS. The view of industry organisations and businesses in Australia, reported by CCIWA, is that skills and knowledge of enforcement staff vary substantially across jurisdictions and products.

- *Are requirements for biosecurity-related audit arrangements unnecessarily burdensome? Could audits be combined or streamlined?*

DAFWA has noted that industry has not pressured for greater deregulation of biosecurity provisions and, to the contrary, has sought additional controls to protect against potential incursions of agents which could damage the production base or impact on market access.

- *Is it likely that the new Biosecurity Act 2015 (Cwlth) will achieve its aims of managing biosecurity risks to an acceptable level, managing the impact associated with biosecurity incidents, and maximising the economic efficiency of the management of biosecurity risks?*

The Biosecurity Act 2015 will only achieve its aims if it is adequately resourced. The perception in community and industry is that government is cutting resources and preventative measures are being sacrificed to meet political constraints.

WA has provided comment on the proposed Bill during its development phase. In particular, the need to keep the right for WA to have its own regulations in place for certain pests and diseases to ensure regional freedom which is essential to our market access. The Western Australian government would support moves to update

the biosecurity legislative framework to reflect changes in the requirements and expectations of our major customers and the need to maintain international competitiveness through our export supply chain.

The suggestions contained in the Competitiveness Green Paper concerning biosecurity were supported at the time. Working more closely with industry is essential as there are limited Government funds to spend in this area. The National Biosecurity Committee (consisting of all jurisdictions) has a policy framework that it is working towards completing that covers many of these areas. The Australian government should continue to support the NBC and make sure that its work is focussed on identified priorities.

The capability to undertake the risk assessment necessary is lacking. Increased effort to upskill existing resources is required immediately. In addition, without real data which is experimentally collected in the field to add into current models or risk assessment framework confirmation as to whether or not the investment is sound cannot be improved. Each region would require further data input to support improvements regarding the general risk frameworks currently in place.

A March 2012 forum on Western Australian grains industry biosecurity preparedness identified a number of issues associated with local biosecurity processes:

- Surveillance and diagnosis was considered inadequate to maintain data sets for trade purposes and new market access submissions.
- A need to improve the capacity of the WA grains industry to respond and mitigate harm to the industry from any incursion of exotic pests, which included inadequate understanding of the possible impacts of grains pests on the WA grains industry.

These findings suggest a need for investment in surveillance and diagnosis; including the surveillance hardware and software required to collect, analyse, store and share data; human capacity to respond to an incursion of an exotic pest; and biosecurity R&D to build knowledge of grains pests.

The National Plant Biosecurity RD&E Strategy should have an important role in driving the allocation of investment in biosecurity RD&E to reduce replication and ensure the most gain in knowledge from the investment.

Resource capacity at priority times to prevent mid to high level risk events from occurring continues to be a concern to Western Australia. The scope for preventative biosecurity across Australia should be a high level focus for future competitiveness policy development. The WA Government has previously submitted to the Australian Government that increasing demands for modern biosecurity measures at a State level have not been matched with adequate funding support.

- *Are there useful overseas examples of biosecurity regulation that the Commission should examine?*

The Western Australian government considers, at the very least, a review of biosecurity regulation should benchmark the requirements and costs of the current Australian export system against several of our major competitors, such as Canada or New Zealand to gain a better understanding of the extent of any disadvantage being incurred locally. Compared with New Zealand, for example, Australia's regulatory system for export relies less on electronic processing to reduce business compliance costs and is less able to embrace improvements in the domestic food safety system associated with shifts toward outcome based standards.

Food Safety

The Western Australian government supports the application of a nationally consistent practical and risk-based approach to food safety regulation which supports public health and safety but does not place unnecessary cost burden on businesses.

The application of food safety requirements throughout the production chain for local food manufacturers, but not for imported businesses, may unduly raise the opportunity costs of local businesses and has contributed to some products that are not approved for production nevertheless being imported.

Local Government is the primary enforcement agency of the Food Act in this state and undertakes food safety assessments of food businesses, including some primary production businesses subject to Primary Production and Processing standards and those engaged in some form of processing for retail. Each local government authority has the ability to determine the frequency of assessment of food businesses within its boundaries.

The Food Unit administers the *Food Act 2008*, on behalf of the Chief Executive Officer of the Department of Health. Requirements under the Food Act relevant for safe food primary production and processing are as follows:

1) Auditing of food businesses (domestic market) – the DOH is the controlling authority (and hence auditor) for meat production and processing, and the auditor (and enforcement agency) for dairy and shellfish primary production and processing. There are 116 meat processing establishments, 165 dairy farms, 61 dairy processing facilities and 6 shellfish businesses. Meat, dairy processing and shellfish are classified as high risk food businesses and require six monthly audits, while dairy farms are classified as medium risk food business, and require auditing once per year. The auditing service is provided in part, to the food business, and in part to support consumer confidence.

2) Audits of Export establishments – the DOH audits Tier 1 meat primary production and processing establishments, and shellfish (bivalve molluscs) primary production and processing on behalf of the Commonwealth, for the purposes of the *Export Control Act 1982* and overseas country requirements.

3) Authorised Officer Assessments – the DOH are the enforcement agency for dairy, shellfish, and specific exports registered premises (on behalf of the Commonwealth). Authorised officer assessments are a service provided for the benefit of the community, to ensure food businesses adopt and maintain safe food practises. For dairy, and shellfish, which are captured by Part 8 of the Food Act and require a Food Safety Program, authorised officer assessments are only required if the business has demonstrated non-compliance during audit or as a result of a complaint by the public.

4) Verification of Food Safety Programs – the Food Standards Code requires food businesses to have a documented food safety program that is verified by the appropriate enforcement (regulatory) authority. For dairy and shellfish, primary production and processing are required by the Food Act to implement a Food Safety Program. The Food Unit is considered the appropriate enforcement agency is the verifying authority.

5) Depending on the nature of value adding , for example a meat processing establishment value adding, or a third party manufacturer, for example cooking, chilling and packaging, will face different regulatory requirements. In this example, the meat processor will be required to include the value add in its food safety system, which will be included in the DOH's audit of the establishment, however for the third party, the cook-chill-package establishment, would fall under the jurisdiction of local government, and be included in their routine 'authorised officer assessment' (floors, walls, ceilings, and hygiene and handling practices) of that regulatory regime.

Are food safety standards proportionate to the risks they are designed to address?

The food regulatory system is founded on a model of national consistency. All States and Territories have adopted state legislation based on the Model Food Act, and are signatories to the *Food Regulation Agreement 2000 (as amended 2000 and 2008)*, signed by COAG members. The Food Regulation Agreement advocates a cooperative approach to food regulation across all levels of government.

The Australia and New Zealand Forum on Food Regulation (the Forum), of which the Minister for Health is one of ten voting members, is an outcome of the Food Regulation Agreement. The Forum makes decisions on food standards matters, and overarching policies related to food, food safety, and regulation, and is supported by the Food Regulation Standing Committee (FRSC) and Implementation Subcommittee on Food Regulation (ISFR).

FRSC is responsible for the national food policy development, and ISFR is responsible for ensuring consistent implementation of food polices and standards across all jurisdictions.

Food Standards Australia New Zealand undertakes comprehensive risk and safety assessments in the process of developing a new food standard, for implementation and adoption under the *Australia New Zealand Food Standards Code (the Code)*. The food safety standards are designed to be outcome based, they are not prescriptive standards, and as such provide opportunity for food businesses to be innovative in demonstrating compliance. In essence the food safety standards take

into account the level of food safety risk posed by the food, in combination with the risk associated with the food handling activities undertaken with the food business.

The food safety standards are considered the minimum effective regulation to demonstrate safe food production. In many instances, food businesses exceed these requirements, particularly those that export to overseas markets.

It is considered that the national legislated food safety standards are developed through a rigorous and transparent process. They are not prescriptive, but rather outcomes based which provides room for businesses to innovate and implement risk management activities appropriate for their business to mitigate food safety risks.

Only those primary industries that fall within a high risk category have specific food safety standards.

The audit and inspection process can be one of the most costly aspects to business of complying with food safety regulations. Some food businesses undergo audit or inspection by a state and federal regulator in addition to audits for key clients and markets and can subsequently be inspected by a local government officer with limited knowledge of the industry or processors. A number of retailing businesses and fast food establishments have their own QA standards which they apply to suppliers, such as, BRC Global Standard and WQA Woolworths. As a result, food processors face overlapping and at times inconsistent regulations.

- *Are there known examples of best practice process at the state and territory level in dealing with food safety regulation?*

The overarching framework for the food regulatory system separates policy development from implementation, by way of FRSC responsible for food policy development, and ISFR responsible for consistent implementation of food policy, standards and regulation. Both committees are required to provide advice, updates and report to the Forum. The separation of policy development from implementation is consistent with best practice principles.

Work undertaken by FRSC and Food Standards Australia New Zealand, with regard to changes to food standards and national food policy must comply with the Office of Best Practice Regulation (OBPR) guidelines. All food regulatory matters are considered in accordance with best practice regulation. Regulatory proposals by the Forum require preparation of a Regulatory Impact Statement, and are subject to a compliance assessment by OBPR.

- *Are there unnecessary differences between state and territory food safety standards and the Australia New Zealand Food Standards Code?*

Western Australia has a single piece of legislation, the Food Act 2008 which automatically adopts the provisions within the Australia New Zealand Food Standards Code as the appropriate standard. Some other jurisdictions have

implemented separate legislation to administer the primary production standards within the Food Standards Code.

The *WA Food Act 2008* (Food Act) adopts the *Australia New Zealand Food Standards Code* (the Code), including Chapter 4, the Primary Production and Processing Standards, such that where there is a standard in the Code for a primary industry, the commodity/industry is captured under the Food Act. At a national level, ISFR streamlines the implementation of food standards across jurisdictions for the purposes of achieving national consistency, and supporting mutual recognition.

In terms of the requirements of other States and Territories, all jurisdictions have implemented legislation based on the Model Food Act, for the purposes of national consistency. It is true that certain jurisdictions have separate legislation for primary industries, and for food safety management, within these industries. The Code however, is intended to be as consistent as possible with these other pieces of legislation, in terms of technical/safety requirements. It is not generally the regulatory requirements that differ between each State and Territory, with the exception of a few areas, but more the administrative processes existing to administer, support and regulate food businesses.

An example of where there is a difference in regulation between States and Territories affecting primary production is egg stamping. Egg stamping is required under the Code for the purposes of identifying a specific farm. In WA, the requirement stipulated in the Code is adopted in full and applies to all egg producers. However, in Victoria egg farms with flocks of less than 50 chickens, and in NSW egg farms producing less than 20 dozen eggs per week are exempt from the egg stamping requirements of the Code.

To illustrate some administrative difference between States and Territories, in WA, the Department of Health is one of 139 enforcement agencies under the Food Act. Local government makes up the other 138 enforcement agencies. For primary production and processing, the Department of Health is the controlling authority for meat primary production and processing industries (with local government being the enforcement agency), and the enforcement agency for dairy and shellfish primary production and processing industries. In Queensland, the enforcement agency for primary production and processing industries is Safe Food Queensland, where QLD Health and local government (area health services) are the enforcement agency for the further manufacturing, service and retail sector, Chapters 1 to 3 of the Code. In NSW, the NSW Food Authority is the enforcement agency for primary production and processing, and similarly to the framework existing here in WA, local government has an enforcement role for further manufacturing and at point of sale.

- *Do differing state and territory arrangements create unnecessary burdens on farming businesses operating across borders?*

The difference in administrative processes between States and Territories are unlikely to impact significantly on the requirements a food business must comply with. As mentioned previously, the food safety standards were developed by Food Standards Australia New Zealand with input from all States and Territories, and agreed to by the Governments' of Australia, for the purposes of maintaining a

nationally consistent food regulatory framework, and mutual recognition across jurisdictions.

In terms of issues such as the example above related to egg stamping and the differences between State requirements, the impact of burden across borders is likely to be minimal. There would be an issue though if the egg producer in a State that does not require egg stamping under a certain level of production, exports product to another State that requires egg stamping on all product (as per the Code). However, as there are eggs production restrictions imposed by the home State (where the eggs are farmed), most egg producers who would meet exemption requirements in these States, are likely to be intrastate retailers, rather than interstate. The exception may be for specialty eggs, like quail and duck eggs, where to sell in a State requiring stamping on all eggs, the producer would be required to stamp exported product.

Western Australian businesses have not reported any unnecessary burdens due to differences in how food safety standards and in particular primary production and processing standards are regulated across jurisdictions

- *Do food safety audits create an unnecessary regulatory burden? Could food safety audits be streamlined or combined?*

The purpose of food safety audits is to ensure that a food business is adhering to its food safety program/quality assurance system, and hence, safe food production and processing requirements. This not only provides assurance to government and the public as to the safety of the food, but also demonstrates to international markets, that there are adequate controls in place to protect Australia's clean, green and safe food environment, and maintain a viable and attractive export market for agriculture.

In WA, food safety audits are required under the *WA Food Act 2008*, and *Food Regulations 2009*, for meat and meat processing, including bovine, porcine, sheep, deer, horse, poultry, wild game, rabbit, emu/ostrich, and crocodile; dairy primary production and processing; and seafood (bivalve molluscs) primary production and processing.

Currently horticultural products, with the exception of sprouts are exempt for Part 6, 8 and 9 of the Food Act, which pertain to the application of enforcement tools, requires the implementation of an auditable Food Safety System/Program, and registration as a food business. At present there is no regulatory food safety auditing required or undertaken on this agricultural sector.

The *Food Regulations 2009*, state for the purposes of s.11 (2) of the Food Act, any food production activity which a standard in Chapter 4 of the Food Standards Code applies is prescribed. This means that where there is a standard for a primary production commodity in the Food Standards Code that it is captured under the Food Act and Part 6, 8 and 9 will apply to that commodity. There is no standard in Chapter 4 of the Food Standards Code for horticulture products, other than sprouts. However, following food poisoning incidents linked to horticultural products, nationally

discussions are underway to establish a standard for horticultural primary production and processing in Chapter 4.

In accordance with Part 8 of the Food Act, the Chief Executive Officer of the Department of Health (DOH) can approve Regulatory Food Safety Auditors who may be members of staff or other individuals. The approval of Regulatory Food Safety Auditors is managed by the *WA Health Management of Regulatory Food Safety Audit Policy*, and the criteria/qualifications for the assessment of those applying to be a Regulatory Food Safety Auditor, is set down in the *WA Health Regulatory Food Safety Auditor Approval Process Policy*. This means that a third party, outside of government can be appointed to undertake Regulatory Food Safety Audits, and report adverse finding to the appropriate enforcement agency for follow up action where required. So there is already opportunity under the WA Food Act, for food safety audits to be included within the scope of additional third party audits being already conducted on a food business.

Legislatively the DOH as controlling authority for meat must be the auditor. However, dairy primary production and processing food businesses can be audited by an approved Regulatory Food Safety Auditor, outside of the government (except in the case of Export Establishments). At present, for dairy food businesses there are no suitable qualified auditors on the List of Approved Auditors, with the necessary competencies to undertake dairy audits. This means that the DOH must offer this service to the dairy industry. The auditing service provided to the food businesses captured under Part 8 of the Act, undertaken by the DOH are currently undertaken free of charge. A fee for service model is being considered by the DOH to assist with recouping the costs associated with providing this service and to allow third party auditors to be competitive in providing this service.

Many audits are undertaken within the food industry are for the purposes of quality assurance and certification scheme compliance, which are not legislative requirement under food law, but allow food businesses to access additional markets and sell product through certain retailers. While there has been engagement by government with major retailers and other certifying bodies, no clear path to address food business concerns about multiple audits has been agreed.

Business reports of domestic market audit burden is frequently not related to legislated requirements, but rather to industry required quality assurance programs which have a different scope than food safety compliance audits. Quality assurance programs tend to focus more on individual customer and consumer requirements around quality, with varying levels of focus on regulatory food safety requirements of the Food Standards Code.

Businesses supplying to more than one customer often are required to comply with multiple quality assurance programs with ensuring requirement to be audited to each scheme resulting in significant audit burden.

Numerous attempts have been made over the years by government and industry bodies to harmonise these schemes or effect mutual recognition without success. The different purposes underlying Government requirements (sometimes imposed by importing countries) and private systems make comprehensive mutual recognition challenging, however, where such an audit was in full compliance with the Food safety standards it should be achievable.

Local Government is the primary enforcement agency of the Food Act in Western Australia. Local Government undertakes food safety assessments of food businesses, including some primary production businesses subject to Primary Production and Processing standards and those engaged in some form of processing for retail. Each local government authority has discretion regarding fees charged for inspection services along with the ability to determine the frequency of assessment of food businesses within its boundaries. Inconsistent interpretation and implementation of the Food Act by Local Government can contribute to regulatory burden, particularly for businesses operating in different local government jurisdictions. A lack of expertise and resources in country regions can contribute to the difficulties confronting businesses.

Food Labelling (including Country-of-Origin Labelling)

The Western Australian Government supports measures to better inform consumers through enhanced country of origin labelling although the relevance of such an issue within the context of a competitiveness policy document is weak. There is room for improvement in the Country of Origin Labelling (CoOL) provisions, especially in the need for a terminology which is more accessible to consumers.

Any changes to the labelling measures need to strike a balance between consumer interest and support of the Australian food industry, while minimising the compliance burden. Support has been broadly given to the recommendations of the House of Representatives Standing Committee on Agriculture and Industry Report on the inquiry into country of origin labelling for food.

The development and adoption of food labelling standards in the Food Standards Code is subject to extensive consultation and approval through the Office of Best Regulation. The move toward voluntary industry lead labelling schemes as demonstrated with the Health Star Rating scheme and alcohol pregnancy warning labels is laudable.

The process and timing involved in the current Country of Origin labelling reform and the Free- Range Egg labelling information standard has provided industry, specifically Small and Medium Enterprises (SMEs), with insufficient time to acquaint them with the content of the draft information and provide feedback.

Consumers do seek clear simple information on where food comes from and this information should be applied consistently on all food products. In Western Australia, local companies with a domestic focus seek to maximise parochial purchasing through the use of regional or Western Australian branding, such as 'Buy West Eat Best' logo. The success of the program has clearly demonstrated that people are interested in purchasing local food.

The requirement outlined in the draft Country of Origin information standard that businesses are required to utilise the "Made in Australia" kangaroo logo on their labelling in addition to a bar chart reduces the amount of label space available for

marketing purposes. While being required to identify the country of origin of ingredients and whether the product is made in Australia, the market should ultimately be allowed to determine the best way to market their products to gain the greatest competitive advantage. .

- *Do food labels provide information that is useful for consumers? What aspects of labelling are likely to be most important to consumers?*

In 2011, an independent Panel undertook a comprehensive Review of Food Labelling Law and Policy (the Labelling Logic Report) making 61 recommendations to government to improve food labelling law and policy. To this effect, the Panel's recommendations advocated a strategic, transparent and informative food labelling system, to support consumer confidence. In December 2012, the Governments' of Australia and New Zealand (the Forum) responded to the recommendations of the Labelling Logic Report, noting and agreeing to further work and the implementation of many of the recommendations, and this work is continuing.

In terms of aspects of food labelling that are most important to consumers, this can vary depending on individual needs and preferences. There are aspects of food labelling that are in place for safety reasons, for example, product identification requirements, and used-by dates. For some consumers, food poses a risk to health, like in the case of the allergic consumer, whereby mandatory warnings and advisory statements provide critical information needed in order to make a safe food purchasing decision. In addition, people with special dietary needs or underlying health concerns, may preference the Nutrition Information Panel (NIP) as important, in allowing suitable food choices to be made. For example, a consumer who has high cholesterol may use the NIP to compare the level of saturated fats in products, to minimise the amount of this type of fat in their diet.

There are also consumers who will preference the consumer values statements, by purchasing eggs from a free range farm, or choosing food that is product of a certain country, or for particular religious and environment reasons. In essence the issues that drive consumer food purchases vary, depending on their needs, values and beliefs.

All food labelling requirements prescribed in the *Australia New Zealand Food Standards Code* exist for food safety, public health and/or consumer information reasons. It should be noted that the development of each labelling standard and amendments to these standards are required to undergo a risk based assessment by Food Standards Australia New Zealand, which includes a public consultation phase.

The usefulness of food labels to consumers is determined by individual concerns, whether they are related to health or values based criteria.

Some consumers place a high value on labelling information that indicates the origin of the food product's ingredients (country of origin) and also the production system used for products of animal origin such as free-range labelling or whether a product contains genetically modified ingredients. Consumers do seek clear simple information on where food comes from and this information should be applied consistently on all food products. The challenge for government is in deciding which

concerns or preferences warrant intervention and which are overly complicating the conduct and cost of business for little marginal improvement.

Other labelling aspects which provide a function from a public health and industry reputation perspective is the information required to initiate a product recall. The speed in which products can be retrieved from the market in the event of a food safety incident, the less impact is likely to occur to other businesses within the sector. It is understood that frequently such recall labelling information can be inadequate on imported products which presents a public health and places the local industry at a competitive disadvantage.

- *What unnecessary burdens do labelling standards impose on agricultural producers?*
 - *Are labelling standards overly prescriptive?*
 - *Are there inconsistencies in labelling requirements?*

The impact of food labelling on agricultural producers is minimal, for example food that comes directly from the farm, is raw or the minimally processed part of the food chain would require very little labelling. It is the tractability information (for food safety purposes) which would be most critical at this stage of production.

Food labelling is generally principled on the fewer ingredients and less processing undertaken to produce a food commodity, the less labelling required.

Some businesses making health and nutrition claims on products struggle with the prescriptive nature of the labelling regulations under Standard 1.2.7.

Although the term 'free range' as applied to eggs is not regulated in national labelling standards, additional labelling laws implemented in some jurisdictions provide conflicting conditions on labelling requirements – which poses unnecessary regulatory burden for those businesses operating in multi State jurisdictions.

- *Do Australia's truth-in-labelling laws enable agricultural producers to differentiate their products for competitive advantage?*

For the purposes of food labelling, for the most part, truth-in-labelling laws serve to protect consumers from deceptive and misleading representations and conduct. There are requirements for truth in labelling under the *Competition and Consumer Act 2010*, and the *WA Food Act 2008*.

In terms of competitive advantage to agricultural producers from truth in labelling laws, there are some areas, such as "free range egg" marketing, country of origin labelling (CoOL), and religious/environmental certification, where there is opportunity to access specific markets and differentiate products, and attract consumer dollars. With the exception of CoOL, the majority of "consumer values" issues are regulated under the Consumer laws. At present CoOL is regulated under both food and consumer law, but the new CoOL labelling framework that has been proposed by the Australian Government, will see it be moved out of food regulation altogether.

Current truth-in-labelling laws are adequate for agricultural producers to use for competitive advantage.

- *Are food labelling systems appropriately enforced across jurisdictions?*

Food labelling issues are among the most common national food recalls, particularly with regard to food allergen labelling. Most recently concerns over undeclared dairy being found in coconut milk and powder products has resulted in a number of these labelling recalls, identified by surveillance activities across jurisdictions and the use of the coordinated National Food Safety Network.

The WA Department of Health (DOH) would not offer commentary on the enforcement practices of other States and Territories. In WA, however, food labelling is monitored during routine assessments of food businesses by the DOH and local governments, by way of surveys undertaken to look at specific labelling issues, and by complaint from the public and/or competing food businesses. The level of enforcement and monitoring to food labels is often reflective of the level of risk posed by the food and the frequency of assessment required to be undertaken of a specific food business. Resources for labelling surveillance are finite, and therefore many local government enforcement agencies do not afford labelling assessment and enforcement as a high priority, unless there is a direct food safety issue associated. It should be noted though, that once a labelling issue is brought to an enforcement agencies attention, in most instances it will be investigated and corrective action required by the food business. Local government will also take enforcement action, depending on the level of non-compliance and nature of the labelling issue.

- *What aspect of food labelling should be mandatory rather than voluntary?*

All aspects of food labelling required in the *Australia New Zealand Food Standards Code* have undergone risk assessment by FSANZ and have been determined necessary information to enable consumers to make an informed food choice. Labelling standards are developed from an evidence-based approach and include issues associated with the presentation and communication of information to consumers, and for traceability purposes.

The Labelling Logic Report (2011) acknowledges the critical role food labels play in being the “interface between suppliers and consumers”. It considered the finite space provided on the label and the need to balance the competing interests of government and food businesses, in an attempt to provide government with a clear path forward to protect consumers and allow for innovation.

In addition, a labelling hierarchy proposed in the Labelling Logic Report, was principally supported by government, that rated critical labelling information to be related to food safety (i.e.; information critical for traceability, allergen information), followed by preventative health (nutrition information, alcohol labelling), followed by

new technologies (i.e.; genetically modified food, irradiation, nanotechnology), and lastly, consumer values issues (i.e.; country of origin labelling, free range claims, religious and environment certification).

Accordingly, food labelling falling within the scope of food safety, preventative health and new technologies should (and is likely to) continue to be mandatory. While, those requirements which are considered to be more related to consumer values, are seen to be more appropriated managed under consumer laws, by co-regulatory arrangements and industry schemes (i.e. Codes of Practice).

The proposed new CoOL framework by the Commonwealth for the requirements for Country of Origin Labelling of food to be moved out being regulated under the *Australia New Zealand Food Standards Code* and moved into specific regulation for food under the *Competition and Consumer Act 2010*, is consistent with the idea that consumer values issues should be managed outside of food laws.

Certain consumer values issues, particularly those related to religious and environmental preferences are currently voluntary and most often managed by certification bodies outside of government, who are best placed to make decisions on whether a food product meets certification requirements.

Where a labelling element does not fit a public safety or identified consumer value sentiment it should not be a mandatory requirement.

The Health Star Rating system should remain a voluntary labelling option. This labelling scheme was developed in conjunction between government, industry and consumer organisations as a preventative health measure and uptake should be industry lead.

Competition Regulation

The Western Australian Government agrees that competition law is an important subject which has been the subject of a recent, thorough review. The extent that any further review will improve the export competitiveness or performance is problematic.

The relevance of much of the discussion raised in the White Paper process on this subject to the international competitiveness of Western Australian agriculture was questioned in the WA government's submission. Local domestic focused industries already have considerable competition from produce supplied from the eastern states. For example, the Western Australian dairy industry has had to rationalise and remain viable against products brought in at seemingly heavily discounted prices while selling into the price driven fresh milk market. More recently, local dairy farmers have undertaken collective price negotiation to restore pricing levels without requiring intervention from the Australian Government

The Western Australian Government has an objective to double the value of the agrifood sector in Western Australia in accordance with the Agrifood 2025+ initiative

of the Department of Agriculture and Food. In order to achieve this target, new investment and new businesses will be targeted which will also support greater competition and innovation in linkages and supply chains to international markets.

Investment

There is certainly a valuable role for government in facilitating a clearer understanding of the institutional investment Private Equity (PE) sector and its critical role in the future of the Australian agrifood sector as it looks to expand further into Asia.

An audit of the capacity of the PE sector, their understanding of the agrifood sector and their developing interest in investing in the agrifood sector globally would be valuable. Any such audit should be global, since the PE sector operates globally. The audit would be designed to identify these investments from various segments of the investment community (not just Australian super funds), identify business model preferences held by investors and understand the investment criteria as they apply in the 6-8 asset classes that exist within the agrifood space. The audit would seek to inform both the investment industry and the agrifood sector on the respective shifts required in their business models in order to create value from the agrifood opportunities represented by the emergence of Asia.

Both sectors (investment and agrifood) will need to innovate and meet in the middle to optimise the opportunities. Innovative engagement mechanisms must be defined to encourage a meaningful intersection between the sectors. The Commonwealth has well tested means within its arsenal of policy instruments to bring this about. In particular the role of the leveraged public private risk equity capital instrument, known as the Innovation Investment Fund Program, should be assessed as the mechanism for catalysing “productive engagement” between the sectors.

The Western Australian Government, through DAFWA, commissioned KPMG to prepare a report into the capital requirements of Western Australian agriculture. This pointed to the particular requirements of the sector in terms of financing succession, consolidation and access to technology in order to maintain competitiveness and the potential sources of this capital.

The study highlighted a number of areas in which governments could assist industry to be investment ready and to have access to adequate capital to remain competitive in world markets. Among the recommendations of the study was the need for the Australian government to maintain stable policy settings to encourage foreign investment. Farm businesses require education in approaches to adopting more corporate business structures and decision making processes required to attract investors. Strategies such as the separation of land ownership and management and the pooling of resources to achieve investment thresholds received attention in the study. In addition, KPMG has encouraged the development of investment indicators at a national level to assure potential investors of the returns achieved and the benefits of developing commercially based risk management tools.

The need for an index of agricultural investment, as exists in some international investment markets, has been highlighted and can, realistically, only be managed at a national level.

Foreign investment will be important for attracting investment in irrigation infrastructure in many of the Western Australian Government's Water for Food projects. Direct incentives, such as "providing a 50 per cent per year deduction over three years for investment in on-farm water reticulation infrastructure", may be a significant incentive for investment.

The KPMG study did not propose intervention in the finance marketplace by government or the provision of financial assistance, which is discussed in the Green Paper, and the Western Australian government supports non-intervention in this market.

A \$6 million project, led by DAFWA as part of STOA is seeking to enhance the attractiveness of the Western Australian agrifood industry for high growth Asian markets. With a strong focus on exports, the program aims to build a positive reputation among WA's exporters of premium food products, which are increasingly being demanded by Asian markets.

Through industry collaboration, the Asia Market Development program will contribute to the reduction of regulatory burden, as highly integrated relationships with selected trading partners ensure efficient business operations are achieved, ultimately allowing small producers to realise efficiency benefits generated through business cooperation and interaction.

- *Are there regulatory impediments to domestic or foreign investment in agriculture?*

Foreign investment is critical to developing new large scale agriculture in greenfield areas, particularly in northern Australia. The Competitiveness White Paper process appeared to present the conflicting position that recognised the importance of attracting foreign investment on the one hand, yet also notes a Commonwealth commitment to increasing scrutiny of foreign ownership on the other. The paper does not adequately explain how these two positions are not at odds. There are alternative vehicles through which to pursue a policy on investment transparency without imposing on a document intended to promote competitiveness, should a transparency policy be considered in the public interest.

While transparency of foreign investment may be a reasonable, if not precise, objective it would be counterproductive to the national interest if such measures stymied investment needed to drive productivity improvements in the sector.

Importantly, the Western Australian Government has argued for consistency in Federal Government policy on foreign investment which will help to reduce uncertainty in the minds of potential investors.

The process of transferring ownership of a pastoral lease from one individual or company to another requires the written approval of the Minister for Lands, although the Minister must not unreasonably refuse to approve a transfer. For example, the Minister may refuse a transfer upon determining that the application for a pastoral lease is not genuine, i.e. the applicant does not intend to undertake pastoral activities on the lease or if the Minister is not satisfied that the applicant will be capable of managing a pastoral lease in an ecologically sustainable manner.

Domestic pastoral lease transfers:

- As outlined in Section 134 of the *Land Administration Act 1997 (LAA)*, transfer of a pastoral lease requires the written approval of the Minister. Similar approval is required for the creation of a mortgage or charge over a pastoral lease.
- Section 135 requires that if a pastoral lease is held by a company, the transfer of shares may also require the approval of the Minister. This is generally applicable to instances where such a transfer may result in the 500,000 hectare limit being exceeded by one or more of the shareholders of the company or by the company itself.
- However, the Minister must not unreasonably refuse to approve a transfer, mortgage or charge.
- A limit is placed on the maximum amount of leased land that a person may hold. If the approval of a transfer would result in the total land area leased exceeding 500,000 hectares, the Minister must not approve the transfer unless satisfied that the transfer would not be against the public interest.

For foreign pastoral lease transfers an additional process is applicable. The Department of Lands (DoL) requires that no transfer of a pastoral lease should be approved unless there was at least 50% Australian equity and control in the proprietorship of a pastoral lease.

As the acquisition of a pastoral lease by a foreign entity is also subject to the provisions of the Foreign Acquisitions and Takeovers Act 1975 (Cwth) (FATA), DoL is considering processes to simplify assessment and ensuring alignment with Commonwealth policy.

- • *Are foreign investment review processes timely, efficient and transparent?*

Currently, some degree of process duplication is occurring between the State government and the Commonwealth government. This includes referring a proposed purchase to other relevant State government agencies and ultimately to Cabinet, regardless of land area or price.

Proposed improvements to the foreign investment assessment and approval process at a State government level will increase efficiency, resulting in significantly reduced assessment timeframes.

- *What are the likely implications for the agriculture sector from the recent reduction in screening thresholds, creation of a national foreign investment register, and the introduction of application fees for proposals of foreign acquisition of agricultural land?*

The State Government is looking to facilitate appropriate investment in the pastoral industry and overall agricultural sector by foreign entities. The transfer of pastoral land to foreign persons can contribute to the development of the WA economy, including in agriculture and agribusiness. Inflow of foreign capital into the State can contribute to investment, boosting employment, income and tax revenue.

The approval of the Foreign Investment Review Board (FIRB) is a requirement for obtaining appropriate approval for a transfer to a foreign entity. As per Commonwealth Policy, FIRB approvals are subject to factors such as national security, competition, concentration of power, tax revenue, and impacts on the economy, environment and community and the investor having a record of operating on a transparent and commercial basis.

All acquisitions of interests in agricultural land by foreign persons regardless of whether they require approval and regardless of value must be notified to the Australian Taxation Office Register of Foreign Ownership. This occurs in order to track foreign investment within the agricultural sector and ensure compliance with FIRB policy and FATA.

Department of Lands processes are being refined in order to ensure alignment with Commonwealth policy. This will result in replicated processes (including referral to other relevant agencies) no longer be followed, reducing red tape and cutting timeframes.

Other Issues

- *Are there any other government regulations that reduce the competitiveness of farm businesses and/or the productivity of the agriculture sector? In what way are farm businesses affected?*

The Western Australian Government is broadly supportive of strategies and initiatives to ease the burden imposed by labour shortages in the state and the severe impact this places on competitiveness. In particular, the government supports broadening the skill coverage of the Temporary Work (Skilled) visa (subclass 457), expanding the Seasonal Worker Program, any streamlining of visa applications with clearer pathways to residency for visa holders.

The Government has reservations over a proposal to expand the Working Holiday Maker (417) as it may not produce the expected or desired outcomes, for example, employers may not develop career pathways or other aspects of an employment package required to promote longer term employment, particularly in an environment where regional communities are looking for a more stable residence basis.

If a legitimate 12 month work visa category for youth is to be formulated then the age coverage should be limited to 18-28 years. The 417 visa is a cultural exchange program as opposed to work visa program which would mitigate against expanding the countries covered under the program. There would appear to be a strong case to expand the agricultural work requirement in the second year of an extension to 4 months.

Ultimately, however, pursuit of growth markets leading to more widespread adoption of automation is the route to a sustainable solution or agricultural labour availability, higher order skills based jobs in agriculture, higher productivity and international competitiveness.

Government can play a critical role in facilitation of expanded exports, adoption of automation and associated big data infrastructure and GIS through information provision, extension and targeted R&D.

The National Concessional Loans Schemes introduced by the Australian Government in 2014 is inconsistent with the Western Australian Government's policy decision made on 24 January 2011 for the Government of Western Australia not to provide a carry on loan scheme or other similar schemes designed to assist farmers with the Government effectively acting as a 'lender of last resort'.

The Western Australian Government has a clear policy position in support of drought preparedness and is opposed to government being a lender of last resort.

- *Are there other significant regulatory issues affecting farm businesses not directly addressed in this issues paper?*

The issues paper has made limited reference to the impact and role of local government across the agricultural sector. The Federal Government, as a significant provider of funding to this tier of government, could have some role in assisting to consolidate and standardise the allocation of regulation at this level.

Adoption of harmonised law, via the Cooperatives National Law (CNL) regime, for State registered cooperatives, will remove a number of current impediments to adopting the co-operative business model. Adoption of CNL will allow for more robust use of the co-operative business model in the Australian agricultural sector.