



REVIEW OF THE NSW
RURAL ASSISTANCE
ACT 1989

Productivity Commission
Submission

September 1998

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ABBREVIATIONS

AAA	Agriculture — Advancing Australia
ABARE	Australian Bureau of Agricultural and Resource Economics
ABIO	Australian Banking Industry Ombudsman
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
BIE	Bureau of Industry Economics
CUSCAL	Credit Union Services of Australia Ltd
DLWR	Department of Land and Water Resources
DPIE	Department of Primary Industry and Energy
EC	Exceptional Circumstance
IC	Industry Commission
IPART	Independent Pricing and Regulatory Tribunal
JSA	Job Search Allowance
PC	Productivity Commission
QDPI	Queensland Department of Primary Industries
R&D	Research and Development
RAA	Rural Adjustment Authority
RAS	Rural Adjustment Scheme
RASAC	Rural Adjustment Scheme Advisory Council
TPA	Trade Practices Act

SUMMARY

This submission responds to a request by the NSW Review Group for information and comment on issues pertaining to its review of the *NSW Rural Assistance Act 1989*. The submission focuses on a relatively narrow range of matters related to assistance and program performance.

The Review is taking place at a time when government support to manufacturing industry has been declining steadily. In contrast, assistance provided to agriculture in recent years remains at similar levels to those prevailing in the late 1970s (Chapter 2).

The NSW Rural Assistance Act provides authority for the delivery of a small range of special purpose State programs affording assistance to agriculture. Collectively, these programs represent a relatively small component of total NSW Government outlays on agriculture.

The underlying rationales for assistance programs administered under the Act are not always clear. This submission briefly examines some possible rationales (Chapter 3).

In the Commission's view, there is little evidence to justify assistance on the grounds that rural adjustment is impeded by barriers to entry or exit, a lack of capital, or a need to compensate producers for additional costs they may bear as a consequence of other government reforms (eg higher water prices). In some circumstances, government may have a role to play in information provision and in promoting better environmental outcomes. But there is a question as to whether these objectives can be achieved most efficiently through non-budgetary measures (eg defining clear property rights over resources used by the agricultural sector). There also may be a social welfare rationale for assistance — but this needs to be assessed in the context of support available through general welfare assistance programs.

The Commission has some in principle reservations about the effectiveness of the State programs. One concern is that some elements may act simply to transfer income to selected farms and rural activities without having any real effects on rural industry investment and activity levels, or flow-on benefits to the community as a whole. Another concern is that some components may unintentionally reduce efficiency in the sector and its capacity to cope with seasonal and market fluctuations, by discouraging prudent risk management and encouraging investment in marginal projects (Chapter 4).

The Act itself does not provide guiding principles and objectives for the design, implementation and monitoring of rural assistance programs. Thus, in its present form, the Act does not appear well suited to the effective management of a diverse range of rural assistance programs in NSW. The current Review provides a good opportunity to examine this issue and to improve the management processes.

To improve the framework for future management of rural assistance in NSW, the Commission suggests that consideration be given to:

- introducing a revised rural assistance legislative instrument which, in assessing the efficacy of rural assistance, makes the predominant consideration the interest of the community as a whole rather than the benefits to particular rural businesses or activities;
- establishing detailed program design principles to guide the delivery of individual programs within such an economy-wide framework; and
- instituting review functions to monitor the relevance and effectiveness of rural assistance policy and programs in NSW.

1 INTRODUCTION

All State and Territory Governments, as part of their commitments under the Competition Principles Agreement, have agreed to review all anti-competitive legislation by the year 2000. The review of the *NSW Rural Assistance Act 1989*, initiated by the New South Wales Minister for Agriculture and the Minister for Land and Water Conservation, is part of this process.

The purpose of the review is to:

- clarify the objectives of the legislation and their continuing appropriateness;
- identify the nature of the restrictive effects on competition and the industry and economy-wide effects of these restrictions; and
- consider alternative means of meeting the objectives of the legislation.

As part of the Review process, the Issues Paper circulated by the Review Group seeks information on a number of matters related to assistance, including the rationales that underpin the provision of assistance to the rural sector, the appropriate form of assistance and the effects of current assistance arrangements.

Much of the Productivity Commission's work has involved the measurement and analysis of industry assistance. The Commission's submission draws on this work to present background information and analysis which it hopes will be of use to the Review Group in preparing its report. It also takes into account analysis included in the Industry Commission's submission to the 1996 Mid-term Review of RAS and the Commonwealth Government's response to that review.

An economy-wide view of rural assistance has been taken in the preparation of this submission. That is, any such assistance needs to reflect the interest of the community as a whole, not just the interests of the rural sector or particular agricultural activities.

2 GOVERNMENT ASSISTANCE TO AGRICULTURE

The agricultural sector has benefited from a range of Commonwealth and State assistance measures. The schemes delivered under authority of the NSW Rural Adjustment Act comprise one component of these measures. In this chapter, the Commission briefly outlines recent Commonwealth and State budgetary assistance to agriculture in the context of longer-term trends in assistance to agriculture and manufacturing.

2.1 Budgetary assistance to agriculture

In 1994–95 — the most recent year for which comparable data are available — NSW Government budgetary outlays on agricultural assistance amounted to \$274 million (Table 2.1). The corresponding figure for Commonwealth outlays to all jurisdictions was \$651 million. (Details of Commonwealth outlays to NSW are not available.)

The real value of NSW Government budgetary assistance to agriculture increased at an average annual rate of more than 3 per cent over the period from 1984–85 to 1994–95 (Table 2.1). This was less than the average annual growth in assistance to agriculture by all State and Territory governments (over 4 per cent) and in Commonwealth budgetary assistance to Australian agriculture (over 7 per cent). The rapid growth in Commonwealth support reflected the effects of drought payments, especially in 1994–95, when, in real terms, assistance increased by 41 per cent. From 1994–95 to 1997–98, Commonwealth budgetary outlays declined by around 20 per cent.

Assistance provided under the NSW Rural Assistance Act — the subject of this review — represents a relatively small component of total NSW Government outlays on agriculture. It comprises support provided under a number of State assistance schemes and a contribution of 10 per cent to the Commonwealth sponsored Rural Adjustment Scheme (RAS) which is processed under the NSW Act. Net funds approved under the Rural Assistance Act in 1996–97 were around \$50 million (Table 2.2).

Table 2.1: NSW State Government and total Commonwealth Government budgetary outlays on agriculture, 1984–85, 1989–90 and 1992–93 to 1997–98^a (\$million)

	1984-85	1989-90	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98
	<i>Nominal</i>							
NSW	161	177	240	249	274	na	na	na
Commonwealth	na	411	584	453	651	618	543	562
	<i>Constant 1989-90 prices^b</i>							
NSW	228	177	226	232	250	na	na	na
Commonwealth	na	411	549	421	594	548	473	482

a Budgetary assistance was measured as the sum of all outlays (gross less recoveries by measures such as user charges and commodity levies) benefiting agriculture by State and Territory departments and authorities. For joint Commonwealth-State/Territory funded schemes, only the State contributions were included in estimates for NSW. Assistance afforded to agriculture by government provision and pricing of infrastructure, such as water, or by government regulations controlling the conduct of business or the availability of resources (land, labour and capital) is not measured. The assistance measures do not reflect community welfare implications of budgetary support, the economic justification of individual programs or the nature of individual expenditures (eg whether capital or current).

b Nominal values deflated to constant 1989–90 values using the GDP implicit price deflator.

Sources: IC (1996b), IC (1997), ABS Cat. Nos 5204.0 and 5206.0.

Total assistance delivered under the Rural Assistance Act (both Commonwealth and State funded components) is less than one-fifth of NSW Government budgetary assistance to rural activities.¹ Furthermore, Commonwealth funds comprise the bulk of the assistance administered under the NSW Act. State programs make only a minor, and apparently declining, contribution. Approvals for these programs declined from around 3.5 per cent of State spending in 1992–93 to less than 3 per cent in 1996–97.

1 Estimated by dividing funds approved (Table 2.2) in 1996–97 by State budgetary expenditure on agriculture in 1994–95 (Table 2.1) (ie assuming that total State budgetary expenditure in 1996–97 was the same as that in 1994–95).

Table 2.2: Net funds approved for programs initiated under the NSW Rural Assistance Act, 1992–93 to 1996–97^{ab} (\$million)

	1992-93	1993-94	1994-95	1995-96	1996-97
	<i>Commonwealth sponsored programs^c</i>				
RAS 1988	16.8	na	na	na	na
RAS 1992					
Interest rate subsidies and loans	1.2	3.5	4.5	4.0	3.3
Training and advice	0.3	1.6	2.5	3.3	3.3
Re-establishment grants	2.9	7.2	4.8	4.8	5.9
Farm household support payments	0.0	na	na	na	na
Exceptional circumstances	3.2	15.3	41.3	50.8	30.8
Regional drought initiative	na	na	na	na	0.7
Total	7.6	27.6	53.0	62.9	44.1
	<i>State programs</i>				
Special Assistance Schemes	7.5	7.8	11.6	8.1	3.7
Relief Schemes	1.0	1.3	1.3	1.3	2.4
Other Assistance Schemes	na	na	na	na	0.0
Total	8.5	9.1	12.9	9.4	6.1
Total - All programs	32.9	36.7	65.9	72.4	50.1

na Not applicable.

a Where support is provided in the form of a concessional loan (as is the case with the Special Assistance Schemes), the value of funds approved is equal to the capital value of the loan.

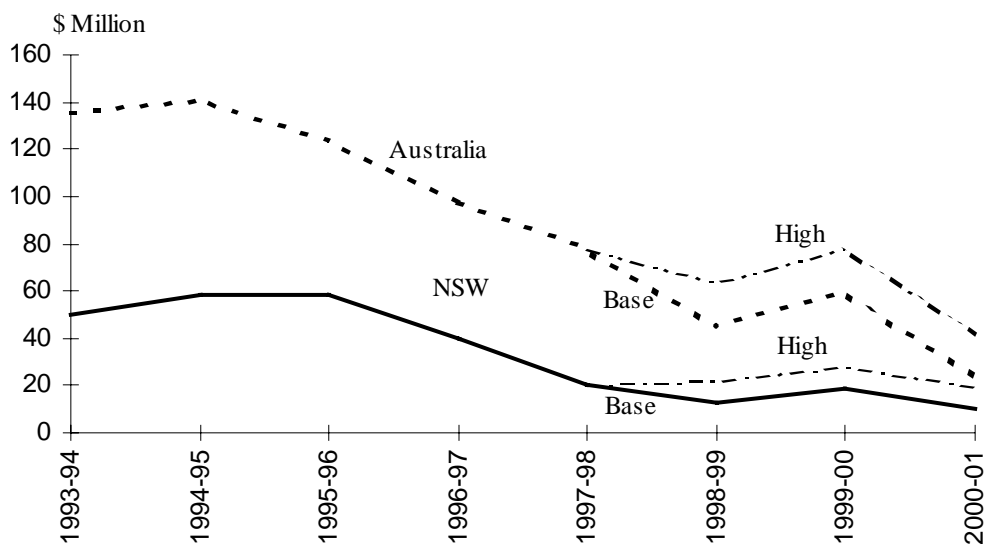
b Funds approved in any one year may be spent in successive years. For example, funds approved in 1992–93 under RAS 1988 were acquitted in later years.

c Grouped in the General Assistance Scheme of section 18 of the NSW Rural Assistance Act 1989.

Source: NSW Government (1998).

Commonwealth funding of RAS components administered under the NSW Act is declining following the recent Mid-term Review. To a limited extent, these components have been replaced by elements of the Agriculture — Advancing Australia (AAA) package initiated in 1997. However, current indications are that the overall level of Commonwealth funding available for delivery under the Act is likely to decline (Figure 2.1). Details of Commonwealth assistance changes are summarised in Appendix A.

Figure 2.1: Commonwealth expenditure on farm assistance programs administered or potentially administered by State rural assistance authorities, NSW and Australia, 1993–94 to 1997–98, and projections to 2000–01^{abc}



- a The schemes included in this analysis from RAS 1992 are interest rate subsidies, re-establishment grants, training and professional advice, land transfers and exceptional circumstances (EC). The schemes from AAA are Farmbis and exceptional circumstances.
- b The base projections for Australia assume that the 1997–98 budget forecast is realised and that the difference between 1997–98 and 1998–99 expenditures and forward commitments is maintained over the period to 2000–01. The NSW projections are obtained by dividing the Australian projection by the NSW average share over the period 1993–94 to 1996–97.
- c The base projections assume no EC support over the period 1998–99 to 2000–01. The high projections assume that the annual average level of EC support approvals over the period 1993–94 to 1996–97 is granted in each year over the period 1997–98 to 2000–01.

Sources: RASAC (various); DPIE advice and Commission projections.

2.2 Agricultural sector assistance

The level and pattern of assistance affects the allocation of resources between sectors and industries. The magnitude of the effect depends mainly on the level of assistance afforded to an individual industry (or sector) relative to assistance afforded to other industries (sectors), and the mobility of resources.

The Commission has estimated assistance to agricultural activities from both Commonwealth budgetary outlays and Commonwealth and State agricultural marketing arrangements. Across all agricultural industries, effective assistance

was equivalent to around 11.5 per cent of value added in 1995–96 (Table 2.3) — up fractionally from assistance in the preceding year.

On average, domestic price supports contributed most to effective assistance to agriculture, but their importance varied considerably across agricultural activities. The level of price support afforded to intensive livestock was well above the sector average of 6.8 per cent in 1995–96, mainly because of dairy price support. Although many price support schemes have been abandoned or scaled down (eg tobacco and sugar), NSW dairy and rice industry assistance arrangements are being maintained at this stage (Minister for Agriculture 1998).

Rural adjustment assistance provided through RAS (including both the Commonwealth and State funded components) contributed about 1.3 percentage points to the total in 1995–96. Extensive grazing and extensive cropping received proportionately more support, due primarily to wool marketing and drought exceptional circumstances assistance received, in the main, by NSW and Queensland farmers (RASAC 1995, 1996). Horticulture received the least adjustment assistance.

Table 2.3: Effective rates of assistance by industry group and component,^a 1995–96 (per cent)

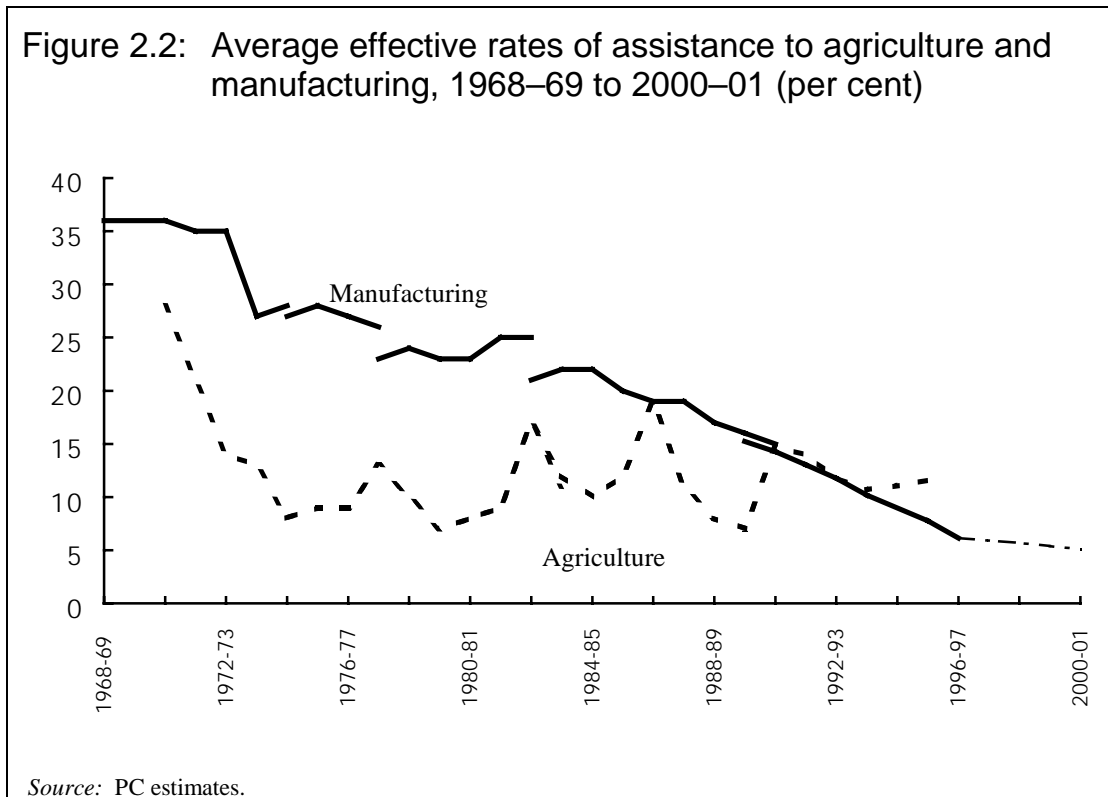
<i>Activity</i>	<i>Adjustment assistance</i>	<i>Research and development</i>	<i>Domestic pricing arrangements</i>	<i>Other</i>	<i>Effective rates</i>
Horticulture	0.3	1.4	1.0	2.4	5.1
Extensive cropping	1.6	1.9	0.0	2.9	6.1
Extensive irrigation and high rainfall cropping	0.7	2.6	3.1	3.7	10.1
Extensive grazing	1.8	1.8	0.0	1.0	4.5
Intensive livestock	1.1	1.7	43.2	0.4	46.4
Total agriculture	1.3	1.8	6.8	1.7	11.5

a The effective rate of assistance is the percentage change in returns per unit of output to an activity's value adding factors due to the assistance structure. It measures net assistance by taking into account not only output assistance and direct assistance to value adding factors, but also the costs and benefits of government assistance to inputs.

Source: Commission estimates.

Assistance to agriculture in Australia has varied over the past 25 years (Figure 2.2). There was a substantial decline in the early 1970s associated with the removal of cost-based price stabilisation schemes. Since then, assistance to

agriculture has been broadly maintained — although subject to significant year-to-year variations.



In the past, manufacturing has also been a major beneficiary of industry assistance, mainly in the form of tariffs and quotas. However, with the progressive lowering of tariffs and abolition of quotas, manufacturing assistance has fallen steadily (Figure 2.2). With scheduled reductions in assistance to the textiles, clothing and footwear and passenger motor vehicles industries, manufacturing assistance is projected to fall further, to 5 per cent by 2000–01.

3 RATIONALES FOR GOVERNMENT SUPPORT FOR THE RURAL SECTOR

The Issues Paper for the Review seeks comments about possible rationales for providing NSW Government assistance to rural activities. To this end, the Issues Paper identifies some possible market failures and some of the objectives of the current schemes.

In this chapter, the Commission comments on a number of rationales commonly cited as justifying government assistance of the type available under the NSW Rural Assistance Act, namely:

- limited availability of capital;
- incomplete information and uncertainty;
- barriers to entry and exit;
- promotion of conservation objectives;
- relationships with other policies; and
- social welfare considerations.

3.1 Availability of capital

The Commission examined whether the availability of capital is an impediment to agricultural adjustment in its submission to the Mid-term Review of the RAS (IC 1996a, p. 29). The examination took into account deregulation of financial markets, longer-term trends in lending to the agricultural sector, survey information on bank lending to farmers and other small businesses, and the supply of funds to the rural sector by major lending institutions.

It found no evidence of impediments to the availability of funds for the rural sector over and above those stemming from normal risk assessment procedures applied by banks to all loan applicants. It concluded:

... there is scope for farm owners to shop around to obtain financial backing. Nonetheless, it is clear that there will be limits to the risks that banks are prepared to finance. Thus, the fact that some farmers cannot attract funding does not necessarily indicate a general problem or barrier to adjustment. (IC, p. 30)

In a similar vein, the Mid-term Review of the RAS found:

... there are no significant failures in the markets for borrowed capital to justify their [interest rate subsidies] continued use. (McColl *et al.*, p. 91)

In the Commission's view, new information demonstrating impediments to the availability of capital to the rural sector — rather than to individuals who find themselves in a relatively weak credit position — would be needed to justify assistance on this basis under the Act (whether to provide loans, limit the ability of financiers to take enforcement action against defaulting farmers, or to reduce the supply price of finance).

3.2 Incomplete information and uncertainty

To manage their activities and plan for the future, farmers need information about a range of factors which influence their production levels and likely returns. This includes information on complex and inherently uncertain matters including future weather patterns, annual yields, future market prices and the effects of alternative technologies on costs and outputs.

It is unrealistic to expect that farmers would have perfect information on these matters. However, producers in other sectors, while less affected than farmers by the weather, also have imperfect knowledge. For example, few manufacturers can assess technological developments and forecast future patterns of consumer demand accurately. Similarly, mining companies cannot predict with certainty the likelihood that exploration will be successful, the nature and quality of new discoveries, or future export prices. And even retailers suffer from incomplete knowledge — for example, the corner shop does not know if its business will be eroded by the opening of a rival business in a similar location.

Information deficiencies are likely to differ between activities and between producers of similar products. In these circumstances, it is difficult to judge the extent of the information problem faced by farmers. However, rural producers do benefit from a range of government measures which seek to promote information dissemination. These include Rural R&D corporations, the activities of CSIRO and agricultural extension programs. There are also private sources of information, some of which are freely accessible (eg published saleyard prices and meteorological data).

Farmers (and other producers) are also able to take advantage of better communication systems. For example, the progressive introduction of new technologies (especially personal computers and software packages designed to facilitate farm management) and improved communications systems are producing new means of information dissemination. It is likely that farmers now have far greater access to information than they had in the past. However,

the very nature of agriculture, with its exposure to weather patterns and biological factors, means that some degree of uncertainty is inevitable.

While farmers would clearly prefer a more stable environment, this alone does not establish a case for government intervention. Farmers have open to them a range of options such as insurance, diversification and other strategies (eg forward cover options) to reduce the effects of uncertainty. If there are factors that impede farmers' risk management, there could be a case for intervention on efficiency grounds. However, convincing evidence of this would need to be demonstrated.

In considering the role that governments should play with regard to uncertainty, it is also important to recognise that uncertainty does not necessarily imply adverse outcomes. For instance, variable climatic conditions provide farmers with both good and bad times. It could therefore be viewed as somewhat one sided to single out natural disasters and drought as issues requiring government intervention to correct a 'market failure'.

The danger of government intervention to compensate for uncertainty in rural businesses is that it could undermine the incentives for farmers (and their financiers) to adopt their own risk management strategies, and hinder the development of forward-looking markets for water, land and other key resources. At its worst, it could bias agricultural resource use in favour of 'risky' practices that increase the fragility of the land, such as over-grazing and inappropriate tillage. It could also defer, or perhaps prevent, efficient adjustment in the rural sector.

3.3 Barriers to entry and exit

Barriers to entry and exit are sometimes identified as factors justifying government support for rural activities. Barriers commonly cited include:

- shortcomings in the capital market;
- the 'lumpiness' of some rural land which makes sale difficult; and
- farm and site-specific assets (eg tobacco kilns) which are not readily saleable.

Capital market imperfections have been discussed above.

The significance of barriers to exit was explored in the Commission's submission to the Mid-term RAS Review which looked at a range of factors such as bankruptcy statistics, banking data and land sale information. The Commission concluded:

While factors such as those outlined above could impede exit, it is not clear from available information that they represent significant obstacles. Moreover, it is likely that many other industries (eg those with large sunk costs) could claim that they face barriers to exit. (IC 1996a, p. 32)

3.4 Conservation objectives

Rural activities have close links with key natural resources (eg the land, forests and waterways) and biophysical systems (such as plant and animal species and the atmosphere). Throughout the community, there is a concern to use these scarce resources appropriately and to promote ecological sustainable development.

One of the existing Special Assistance Schemes aims to improve land management practices in NSW. It provides support in the form of loans (up to 90 per cent of the cost of works) for a range of projects, provided that they have a beneficial impact on the land, the community and the environment (Issues Paper, p. 6). However, often the cause of the problem which the projects seek to address can be traced back to poorly defined property rights, externalities or lack of information. In these circumstances, it would generally be more appropriate for government to address the problem directly — for example, defining clear property rights — than to provide assistance in the form of concessional loans.

Poorly defined property rights

Poorly defined property rights can adversely affect the use of agricultural industry inputs and outputs. For example, farmers with open access to water sources, such as streams and artesian reserves, have little incentive to conserve water and take account of the benefits of using the water downstream.

In principle, government intervention should address the cause of the problem — poorly defined property rights — rather than simply resort to the provision of industry assistance to assist farmers to install (say) more efficient on-farm irrigation systems. In turn, this may permit the development of market mechanisms to ensure that scarce resources are allocated to those who value them the most. For example, the introduction of transferable water entitlements in NSW in 1983–84 and the development of markets for those entitlements are progressively defining the nature and value of water rights. This should result in a more efficient allocation of water resources.

Externalities

In some instances, individual farmers do not bear all costs arising from their use of the land. For example, excessive use of water and poor drainage systems lead to excessive water run-off. In areas subject to irrigation salinity, the run-off is likely to contain higher than average levels of salts and other ground minerals, farm fertilisers and chemicals. This lowers water quality in streams, rivers and underground reserves, to the detriment of downstream agricultural use, other industrial use and household consumption.

In principle, the most appropriate way of overcoming externality problems is to 'internalise' them. This involves trying to ensure that farmers take account of *all* costs of their activity — including costs they may impose upon others. While, in practice, this is seldom straightforward, the most efficient form of government action to mitigate any adverse effects of farmers' activities on others would more likely take the form of a tax or charge (akin to existing waste disposal charges) or a regulation to control run-off rather than financial support through loans. On the other hand, direct financial incentives may be warranted if farmers engage in conservation activities which generate benefits for the broader community (eg preserve areas on their land that have high conservation values).

Incomplete information

Poor conservation and environmental practices may sometimes reflect a lack of information about the environmental implications of different farming practices. If this is the case, the most appropriate policy response would be to ensure that measures are in place to ensure such information is available to farmers.

3.5 Relationships with other policies

It may be argued that some forms of rural assistance are appropriate to compensate for the adverse effects on the rural sector of other policies, and changes in those policies. For instance, in the past, the costs to the agricultural sector of manufacturing industry assistance was sometimes used to support the case for rural industry assistance. However, following reductions in manufacturing industry assistance over the last two decades, it is now difficult to sustain this argument (see Chapter 2).

At present, some argue that unsustainable resource use and structural change in the agricultural sector warrant assistance to the sector. For instance, water rights were for many years allocated on a first-come, first-served basis. As noted above, this provided incentives for over-use and over-investment in

water-using activities. When such activities were deemed ‘unsustainable’ because of water scarcity and other factors, assistance was sought to economise on resource use, protect uncompetitive activities and improve productivity with existing farm structures.

Water policy reform in NSW (and other parts of the Murray-Darling Basin) is a prominent example of policy intended to improve resource use efficiency. However, recent reforms have a number of consequences for rural water users:

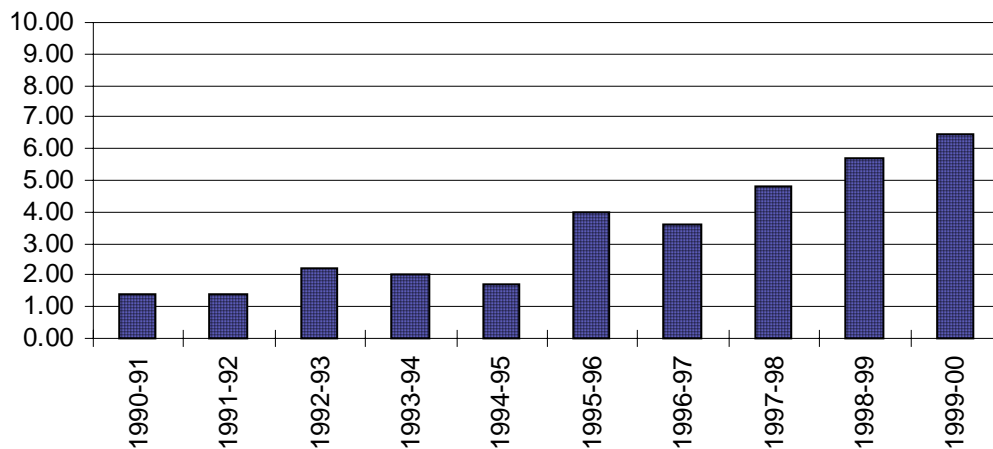
- Water delivery costs are set to rise over the medium term for most users (Figure 3.1).
- Holders of individual water entitlements will have greater freedom to trade those entitlements on a temporary and permanent basis, with the progressive introduction of trade between the States.
- The total amount of water available for on-farm use is not likely to expand, and may contract, in NSW. For example, analysis of water use in the Southern Murray Darling Basin suggests that current water usage is 116 per cent of a ‘low environmental flow’ scenario. Therefore, even a modest shift towards increasing environmental flows would reduce water for agricultural use by more than 10 per cent (NSW Agriculture and Natural Resources and Environment 1998).

The effects of water reform on the mix and organisation of farm activity in NSW will occur progressively, but will be accompanied by pressure for structural change. Much of the impending change may occur in the normal course of business. However, some farmers may find their current operation uneconomic when faced with reductions in water supply and/or higher water prices. There will be a temptation for some to seek assistance to ‘compensate’ for the effects of water reform.

Given the wide range of NSW rural assistance programs, proposals for assistance could come in many forms. For example, farmers could seek support under conservation programs. Others could seek assistance for environmental works.

In some circumstances, there could be a case for providing some assistance to facilitate adjustment to the new regime. However, there are some dangers if the assistance is not well targeted. For example, if the assistance were used merely to prop up existing inefficient operations, it may deter necessary adjustments. This could increase the number of financially and environmentally marginal farms and lead to additional claims for exceptional circumstances assistance, re-establishment grants and farm household welfare support.

Figure 3.1: Estimated average bulk water prices in New South Wales, 1990–91 to 1999–00 (\$ per ML)



NOTE: The upward trend in the average unit costs is due to a move towards full cost recovery in water supply commenced in 1989–90. Year-to-year variations around the trend are mainly due to seasonal changes in the composition of water use (particularly between higher cost northern NSW and lower cost southern NSW).

- a The average unit cost of water is obtained by dividing the revenue from sale of bulk water by usage.
- b Estimated usage for 1997–98 is based on 11 months' usage. Projections for 1998–99 and 1999–00 are based on DLWR estimates of the long-term usage of water.
- c Projected prices are the maximum prices for bulk water services under section 12(1) (a) of the *Independent Pricing and Regulatory Tribunal Act 1992*. Prices are determined for regulated river, unregulated river and ground water supplies. The prices are weighted together according to DLWR measures of long-term average usage.

Sources: IPART (1998, Table 10.1); information provided by Department of Land and Water Resources.

In the Commission's view, it is inappropriate to use such assistance to offset, over the medium to longer term, the effects of other government policies designed to improve the efficiency of water provision. Similarly, it would be inappropriate to use the assistance measures to offset the effects of government interventions elsewhere in the economy.

3.6 Welfare considerations

Aside from the possible efficiency reasons for rural assistance, there may be a social welfare rationale for a safety net in bad times. The national Drought Relief Payments, introduced as a parallel scheme to the Job Search Allowance (JSA), provide a recent example of additional support being justified on welfare grounds. Also, a number of elements of the AAA policy package have a welfare justification (see Appendix A). In NSW, the Rural Assistance Act

provides for natural disaster relief for some farmers unable to obtain finance to carry on after natural disasters.

While assistance may be justified on welfare grounds, it needs to be ascertained whether welfare support will be available from general social welfare schemes. There is a need to avoid duplication of support and opportunities for individuals to 'double dip'. If welfare support is to be justified within a rural industry framework focusing on improved efficiency, two criteria should be considered.

One consideration is that the welfare support should be delivered in a way that minimises adverse effects on efficiency. In particular, it should not significantly undermine the self-reliance of the farming sector and the sustainability of farming activity.

A second consideration is whether sector-specific welfare support would set up any major inequities and/or adverse incentives in the way that it interacts with the general social security system. Indeed, a key threshold question is whether a sector-specific safety net is required at all. There may be potential for some farm families failing to meet the asset and/or income tests applying in the general schemes, yet being worse off than some non-farm families who qualify under the general schemes. Alternatively, it could be that farm families receiving income support through a rural program, while facing particularly difficult circumstances, may be no worse off than the non-farm families who do not qualify for general welfare assistance. This issue would need to be considered if a welfare rationale for a rural sector-specific scheme is being considered.

4 PERFORMANCE OF NSW ASSISTANCE SCHEMES PROVIDED UNDER THE ACT

Total NSW Government assistance to the agricultural sector is significantly greater than that administered under the Rural Assistance Act (Chapter 2). In principle, it would be appropriate to assess jointly the public benefits of all agricultural assistance programs, and to eliminate or modify those programs that do not generate net benefits. It is recognised that this task is beyond the scope of the current review. However, the review of the *Rural Assistance Act 1989* provides a good opportunity to legislate for procedures to assess regularly, in an integrated manner, the effects of all programs on rural sector efficiency and the attendant public benefits. Ideally, this would not be restricted to programs delivered by specialist rural assistance agencies, such as the NSW Rural Assistance Authority. An important issue is whether a future rural assistance Act should be developed solely as enabling legislation for the delivery of selected schemes, or whether it should provide for a broader review and monitoring of rural assistance in NSW.

The effectiveness of assistance schemes under the existing NSW Rural Assistance Act depends on the underlying design principles, the likely effects of each of its measures and the feedback effects of some components on others. In this chapter, the Commission comments briefly on each of the main schemes delivered under the Act.

4.1 General assistance scheme

Assistance is granted by the Rural Assistance Authority (RAA) under section 18 of the Act for:

- (a) permanent improvements to a farm (including fencing, fodder or grain storage facilities, stockyards and water supplies of a minor nature); or
- (b) production improvements to farms (including pasture improvement, fodder conservation and stock improvement).

As it stands, the purpose of section 18 support to farmers is concerned with on-farm operations. However, the Act does not contain any specific guidance concerning the criteria that should be satisfied before assistance is granted, not even that it provide public benefits. Nor is guidance provided by the general requirements of the Act *vis*:

... to enable the provision of rural assistance; constitute the New South Wales Rural Assistance Authority and to specify its functions; and for other purposes. (Issues Paper, p. 12)

In practice, assistance for these purposes has been provided largely by components of the RAS and there have been no State schemes authorised under section 18 (Issues Paper, p. 4). The Commission addressed the performance of RAS 1992 in its submission to the Mid-term Review. The evidence assembled by the Commission showed that RAS had benefited individual farmers. However, the broad examination of the components of the scheme revealed little evidence that the overall contribution to economic efficiency had been positive. The Productivity Commission is not aware of new evidence to support the contrary view.

The outcome of the Mid-term Review and its subsequent replacement by the AAA package has defined future agricultural assistance activity that might be provided under this section of the Act. One issue for review is whether section 18 should be tailored to meet the specific program delivery needs of remaining RAS obligations and relevant AAA obligations, or whether it should retain its more general form. If it is tailored to RAS/AAA obligations, account will need to be taken of the changing nature and downward trend in such assistance (see Chapter 2). If instead a more general form is to be retained, an issue for review is what the rationale or criteria for such assistance should be.

4.2 Special assistance schemes

These schemes are provided under section 19 of the Act. They provide assistance to farmers or other persons involved in rural industries for special purposes as determined by the Minister. Special assistance schemes are the main form of State assistance provided under the Act (Table 2.2). During the 1990s, the level of approvals rose to a peak of \$11.6 million in 1994–95 — when assistance to agriculture peaked on account of drought. Approvals then declined sharply to \$3.7 million in 1996–97.

The Issues Paper cites the current Special Conservation Scheme as a representative application of section 19 (Issues Paper, p.6). This scheme allows for a loan by the RAA of up to 90 per cent of the ‘reasonable’ costs of on-farm conservation works, up to a maximum of \$100 000 over 10 years (RAA 1997). Loans are made at a concessional interest rate 25 per cent below the NSW Treasury 10-year bond rate. Currently, the rate is about 5 per cent a year.

The on-farm capital programs nominated to be eligible for assistance comprise a mixture of farm-specific activities and other activities that are likely to have a

spillover effect to the wider community. For example, they include farm-specific capital programs relating to soil conservation, stock and domestic water supply, the upgrading of farm irrigation systems and tile drainage. Eligible projects with public good characteristics include control of invasive species of weeds and feral animals. In other cases, requirements for rural holdings to provide environmental amenities not justified on commercial grounds (eg fenced woodlands and nature corridors) are eligible under program guidelines (see RAA 1997).

One assessment criterion is that projects should not be purely productivity-based, but should also provide some community benefit (Box 4.1). Other criteria confine eligibility to viable farming enterprises deriving most gross income from farming. The only exception is support for serrated tussock control, for which the occupation and income-source tests — but not the farm creditworthiness tests — are relaxed. It is not clear why eligibility for land conservation works with public good characteristics should be so limited. Indeed, farms in poor financial condition or farm enterprises deriving the majority of income from off-farm activities may be in more need of conservation work than farms currently eligible for assistance — a fact partially recognised by the modified criteria for the treatment of serrated tussock.

For some projects, the assistance may bias investment decisions away from the most efficient land use alternative, or be used, at the margin, for projects that are not commercially viable. For projects that have a genuine public good characteristic, the assessment criteria for the scheme would not appear to necessarily ensure that the appropriate mix of conservation works are undertaken.

Box 4.1: Assessment criteria for the Special Conservation Scheme

The assessment criteria are:

- the proposed work must have a beneficial impact on the land, the community and the environment and cannot be purely productivity based;
- the farming enterprise must provide at least 51 per cent of the total gross income of the applicants;
- the farming enterprise must be in working occupation of the farm and be of moderate means (net assets of up to \$800 000);
- the applicant does not need to have a minimum level of commercial borrowings, but must be able to demonstrate a capacity to repay the proposed advance; and
- satisfactory security is required to support the advance. In the case of loans for soil conservation (including woody weed control, stock and domestic water supply and upgrading of existing irrigation systems), a Statutory Charge is taken over the land on which the work is carried out.

Assistance for serrated tussock control does not require applicants to be in working occupation or be dependent on farm returns.

Source: RAA 1997, section 2.

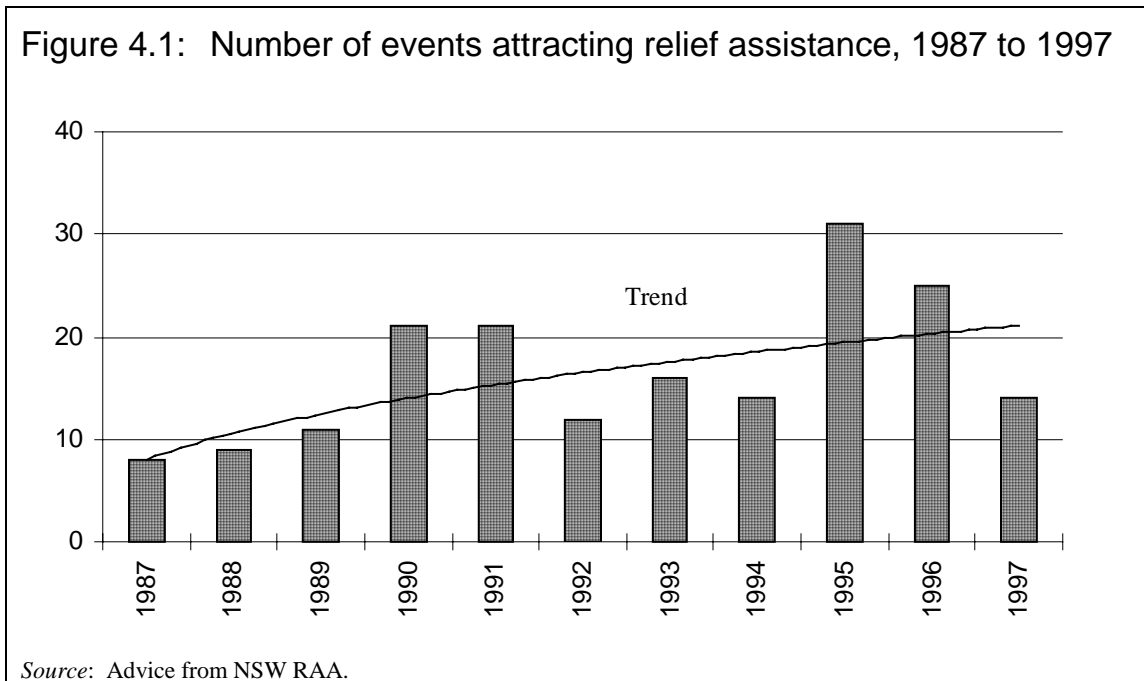
4.3 Relief schemes

These schemes are provided under section 20 of the Act. Relief assistance was provided for more than 190 events over the period 1987 to 1998, including bushfires, floods and other seasonal occurrences. This assistance is provided at the discretion of the Minister for the purposes of:

- replacing lost or damaged farm improvements or stock;
- enabling farm operations to continue;
- providing fodder; and
- other purposes determined by the Minister.

Assistance is provided through a loan made by the RAA to the minimum amount required for 'essential requirements' (or carry-on requirements) coming within one of these categories. Currently, loans have an upper limit of \$80 000 and are for a maximum of 10 years. There is a potential interest-only period of 2 years. The prevailing interest rate is 6 per cent per annum. As shown in

Figure 4.1, the number of events each year attracting relief assistance has tended to increase over time.



The relief schemes appear to operate in parallel to the exceptional circumstances provisions of RAS 1992 and the AAA package which provide carry-on finance in times of severe market downturns or other exceptional circumstances. It is suggested that the appropriateness of maintaining parallel relief arrangements for unexpected events be examined. If parallel arrangements are warranted, the NSW eligibility criteria could be reviewed for appropriateness and consistency.

Special relief is distinguished from other NSW schemes in that it provides less stringent assessment criteria. In particular:

... the applicant must be in need of urgent and genuine need of assistance which if obtained commercially would place the enterprise's financial viability at risk.

and:

There is no assets test applied and it is not necessary for the applicant's banker to indicate that further assistance will not be provided. (NSW RAA, 1997, and section 20(1) of the Act)

There is therefore a threshold issue of determining whether there is a sound rationale for maintaining this form of assistance.

The efficiency case for assistance appears weak. The potential for such events to occur is common knowledge and of a seasonal nature. In the normal course of business, it would be expected that viable farm businesses would often have access to:

- short-term lines of commercial credit for carry-on immediately after an unexpected event; and
- longer-term insurance cover for casualty insurance claims arising from unexpected events (subject, of course, to the availability of such cover in commercial insurance markets).

It is not evident how special relief schemes are intended to improve the operation of the market for services providing short and long-term security against unexpected events. However, special relief could affect efficiency adversely by lowering the incentive for farmers to be self-reliant and the incentive for financiers and insurers to offer facilities to help farmers manage unexpected events.

On equity grounds, relief schemes could be questioned if they work predominantly to reward those who take least action to protect themselves against the adverse effects of flood, fire, famine and the like. If, instead, special relief programs are maintained on humanitarian/welfare grounds, this fact should be made explicit and criteria for the provision of funds should be designed to minimise adverse effects on farm efficiency and the pace of rural adjustment.

Whether relief loans are provided on efficiency or humanitarian grounds, the Review Committee may wish to consider the appropriateness of loan terms and security arrangements. Possible questions include:

- should relief loans be secured by a mortgage against property?
- should standard commercial mortgage interest rates apply ?
- should interest holidays be capitalised?

Overall, it is suggested that the Review examine the appropriateness of relief loans that are structured along sound commercial lines and discountable on secondary mortgage markets.

In the longer run, farmers who use government relief schemes to carry on should not be advantaged over farmers who employ commercial finance and insurance facilities.

4.4 Other assistance schemes

Section 25 of the Act enables the NSW Minister for Agriculture to appoint the RAA to administer other State and Commonwealth rural assistance schemes. The only scheme to be administered under this section is the Commonwealth-State Drought Regional Initiative introduced in 1996–97.

This scheme provides assistance to improve drought preparedness and management in the agricultural sector. Assistance is available to farmers and others with eligible projects. The project areas and associated selection criteria emphasise on-farm projects (Box 4.2). Sector-wide activities such as ‘climatology and weather analysis’ and ‘alternative sources of forage’ can also be assisted. Assistance is in the form of a grant of 10 per cent of project costs up to a maximum grant of \$10 000. This is a substantial maximum potential subsidy considering that the average level of capital expenditure per farm enterprise in 1995–96 was around \$16 500 (ABS Cat. No. 7507.0, Table 4).

Box 4.2: Assessment criteria for Drought Regional Initiatives

Assistance is provided for works that:

- augment the Cap and Pipe the Bores Program;
- provide on-farm works that provide water for livestock;
- include on-farm works that improve fixed infrastructure for fodder conservation; and
- provide for the purchase or adaptation of existing machinery for conservation farming purposes.

The assessment criteria should take account of:

- the extent to which expected drought preparedness benefits the farm business enterprise;
- the extent to which expected drought recovery and preparedness benefits the wider region;
- any additional measures agreed for implementation by the farmer that complement the activities directly supported by the grant; and
- the total funds available for support of the Project.

Source: Advice from NSW Rural Adjustment Authority.

The discussion in Chapter 3 does not suggest that there are any financial barriers limiting on-farm projects to improve preparedness for drought through project works. Therefore, a case would need to be made that farmers would under-

invest in such works. Because of the variety of possible projects and recipients that may be assisted under the scheme, wider public benefits of providing assistance would have to be tested on a case-by-case basis. In this context, other issues that should be considered include whether:

- the projects would go ahead in the absence of assistance; and
- adverse interaction effects between this scheme and other Commonwealth and State programs such as the State Special Conservation Scheme (discussed above) and the AAA component Farmbis can be avoided.

4.5 Protection orders

Protection orders issued under Division 4 of the Act have the effect of suspending some legal actions, warrants of execution against land and chattels, and other proceedings arising out of a default under a mortgage or other security, or under agreement for sale or purchase of land.

As no protection orders have been issued since 1985 and no applications have been made since 1989, the first issue is whether they currently provide any material benefit to farmers. A related issue is whether protection orders have been made redundant or replaced by other developments in credit market regulation.

The *Farm Debt Mediation Act 1994* is a prominent development providing an alternative to protection orders. The object of the Act is to:

... provide for mediation concerning farm debts before a creditor can take possession of property or other enforcement action under a farm mortgage.
(*Farm Debt Mediation Act 1994*, section 3)

The costs of mediation are shared equally by the financier and the farmer. Additional costs incurred by either the lender or borrower (eg for the services of an accountant) are borne by the party retaining the service.

The Act specifies a process to resolve differences between borrower and lender (Appendix B). Its provisions do not define a process by which government intervention can modify existing contractual relationships or commercial judgements of either party. In this respect, it differs from protection orders which effect such changes. Nevertheless, the Act does restrict the actions of financiers by requiring them to offer mediation before taking enforcement action. Since its inception, major banks have issued 1094 notices of mediation, while 745 farmers have requested mediation (RAA 1998). Overall, about 540 mediations have been completed with major banks (nearly all mediations with rural financiers). This group represents around 2 per cent of agricultural

enterprises in NSW. Of the mediations completed, agreement between the contracting parties was reached in about 80 per cent of the cases.

Other possible sources of mediation and consumer protection include the Banking Industry Ombudsman, the *Credit (Rural Contracts) Act 1987* and the Australian Competition and Consumer Commission (ACCC) (Appendix C). The Australian Securities and Investment Commission does not have jurisdiction relating to credit products and, hence, does not afford direct assistance to rural (or any other) borrowers.

Overall, it appears that protection orders have been made redundant by the evolution of the Debt Mediation Act and other instruments. Thus, one course of action is remove the protection order facility. However, before doing so, it may be appropriate to review all rural credit arrangements to assess the contribution which they make to broader community efficiency and welfare objectives.

5 IMPROVING THE FRAMEWORK FOR AGRICULTURAL ASSISTANCE IN NSW

The role of the *NSW Rural Assistance Act 1989* has been to provide for the delivery of a small range of rural adjustment and related forms of assistance to agriculture. It is evident from current forward commitments that the level of activity under these schemes is declining and that other NSW Government administered programs are a more significant source of assistance to the NSW rural sector (Chapter 2). The underlying rationales and associated issues need to be considered in designing appropriate assistance schemes for the rural sector (Chapter 3), and there are grounds to suggest that components of existing schemes do not, *prima facie*, have a sound policy rationale (Chapter 4).

While there is substantial variation in the nature of schemes delivered under the Act and under other instruments, they all provide assistance in one form or another to agriculture and associated rural communities. In this chapter, the Commission outlines some principles which could be used to review the State rural industry program. It first discusses framework issues and then considers program design principles.

5.1 Framework issues

In its present formulation, the Act is not well suited to the effective management of a diverse range of assistance programs in NSW. In particular, in its present form the Act provides no guiding principles and objectives for the design, implementation and monitoring of programs. It does not take account of the reality that rural industry assistance is provided by a number of agencies.

Two important changes have occurred since the formulation of the *Rural Assistance Act 1989*. First, there have been substantial changes to the rural assistance programs delivered under the Act. Secondly, the Competition Principles Agreement endorsed by the Council of Australian Governments (COAG) requires that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs of government intervention to restrict competition, and that the objectives of the legislation can be achieved only by restricting competition.

The COAG changes require program design to move away from emphasising benefits that government support might provide to claimant individuals and businesses, towards net benefits that programs provide to the community as a

whole — the economy-wide approach. The changes also emphasise the selection of the most appropriate form of intervention given COAG principles and social policy goals.

The case for assistance to agriculture should be assessed from an economy-wide perspective. As for any industry policy, the interests of the community as a whole, rather than those of a particular firm or activity, should be the predominant consideration. To give effect to the economy-wide approach, a rural assistance legislative instrument should contain:

- a clear rationale for why assistance to the NSW rural sector is needed;
- objectives for rural sector assistance in NSW which emphasise the broad public benefits that are expected to arise from the provision of assistance;
- a requirement that government action improve the efficiency of the operation of the rural sector;
- a requirement that competition not be restricted unless it can be demonstrated that community benefits exceed community costs and that the objectives of the legislation can be achieved only by restricting competition;
- a requirement that account is taken of the effects of government intervention on the economy generally;
- a requirement that the implementation plan for any one program include:
 - the program objective(s);
 - performance requirements;
 - performance indicators; and
 - a schedule for review and evaluation.

If support to farming communities is justified on social welfare grounds, the following criteria should be satisfied:

- first, the welfare support should be delivered in a way that minimises adverse effects on efficiency. In particular, it should not undermine self-reliance in the farming sector; and
- secondly, the interaction between rural assistance welfare support and the general social security system should not create major inequities and/or adverse incentives for the allocation of resources.

The economy-wide approach should be applied to assistance to all industries. However, the scope of the current review is confined to assistance to the rural industry in NSW. To apply the economy-wide view to the rural sector, it would be beneficial to cast a new rural assistance Act so that its guiding principles

applied to all assistance affecting the rural sector in NSW (ie not only that funded by the NSW Government). There would also be benefit in instituting review functions to:

- establish and maintain design principles for rural industry assistance programs in NSW;
- maintain an up-to-date register of all rural industry assistance in NSW;
- monitor and report on the industry and economy-wide effects of rural assistance programs, budgetary assistance and government interventions directly affecting NSW agriculture;
- analyse key industry and institutional developments affecting rural industry assistance in NSW;
- monitor and report on rural welfare programs, their effectiveness in providing support to people in need, their effect on sectoral efficiency and the interaction between rural-specific and general welfare programs; and
- publish a consolidated rural industry assistance review at regular intervals (eg annually).

Ideally, these functions should be undertaken by a body that is independent of program delivery authorities, including those established under a revised rural assistance act to deliver particular schemes. Schemes should not be judged by activity indicators, such as the level of spending or number of approvals, but on the appropriateness and effectiveness of that expenditure.

5.2 Design principles

To give effect to the legislated performance requirements for rural assistance and provide a means of delivering individual programs within an economy-wide framework, there would be benefits in establishing some general program design principles. Such design principles would be used to:

- assess whether the program is consistent with objectives for agricultural assistance generally, likely to deliver a net public benefit and be administratively feasible;
- design performance indicators; and
- monitor and review the program against its objectives.

A set of possible design principles is provided in Box 5.1.

5.3 Regulatory best practice

The implementation of appropriate design principles should be seen as part of a broader program to achieve regulatory best practice. The principles as such do not contain a presumption against particular forms of regulation or market intervention, such as ‘command and control’. Similarly, they do not contain a presumption in favour of ‘commercial’ incentives as suggested in the list of characteristics of regulatory best practice (Issues Paper, p. 2). Rather, the principles require that alternative assistance proposals be tested against outcomes which would result from providing no assistance and other available forms of government action, to select the alternative which provides the greatest net benefit to the community, given policy objectives.

Box 5.1: Detailed design principles and questions

Objectives: Does the proposed assistance scheme address a clear and identifiable agricultural sector problem coming within the scope of rural industry assistance?

Adverse selection: Does program design cause self selection by the designated target group? Does its design use eligibility criteria and farmer incentives in a way that selects/attracts farm projects that comply with program objectives?

Inducement: Does the program produce an outcome different from what would have happened otherwise?

Avoiding strategic behaviour and distortions: Does the program avoid inducing strategic behaviour to manipulate affairs so that individuals become eligible for program support other than that intended by program objectives and eligibility criteria?

Government failure: Is the danger that government intervention may be ineffective sufficiently small?

International obligations: Does the program breach Australia's international obligations?

External effects: Does the program impose substantial costs on any group?

Avoiding unforeseen government liabilities: Is there an element of transference of risk from the farmer and farm financiers to the government, and is the level of government liability clear? And, is the program financed in the least cost way?

Take-up: What proportion of the target group participates in the program? Is the level of assistance available such as to encourage an appropriate level of entry to the scheme?

Correct scale of resources: Does the design of the program include appropriate rationing mechanisms when demand exceeds supply, and withdrawal mechanisms when supply exceeds demand?

Timing: Is the time needed by farmers and others to gain access to program elements consistent with the program delivery timetable?

The right duration: Is the length of the program appropriate for it to meet program objectives and for its effectiveness to be assessed?

Encouraging administrative ease and efficiency: How easy/costly is the program to administer and monitor? Are compliance costs for the recipients low?

Accountability: Is the program transparent both in terms of the reasoning behind its introduction and in its effectiveness of implementation, given the program objectives?

Robustness: Is the program robust to changes in the rural environment (eg general economic conditions and adjustment imperatives)?

APPENDIX A

CHANGING COMMONWEALTH SUPPORT TO AGRICULTURE

There have been several variants of the RAS scheme, with the latest being RAS 1992. Following the Mid-term Review of the RAS (McColl *et al.* 1997), the Commonwealth Government decided to end the interest rate subsidy and some other elements of the RAS program and merge the remaining elements of RAS into a new program called ‘Agriculture – Advancing Australia’ (AAA) (Table A.1).

Table A.1: Treatment of RAS elements following the Mid-term Review of the RAS

<i>RAS elements</i>	<i>Last day for receipt of applications for assistance</i>	<i>Last day for provision of assistance</i>	<i>Expenditure 1997–98</i>
Interest rate subsidies and loans	30 September 1997	30 June 2000 }	
Training and professional advice	30 June 1998 ^a	30 June 1999 ^b }	
Re-establishment grants	30 November 1997	30 Nov. 1999 ^c }	Total 98.8
Land trading	Ceased 1997–98	na }	
Rural partnership program	Included in AAA	Continuing }	
Exceptional circumstances	Included in AAA	Continuing }	

a Refers to the last date for approval. Some States have agreed to extend the approval date to 31 August, under different funding arrangements.

b Last date for assistance 28 February for States that accepted the extension. Last payment date depends on final processing of applications.

c Last day for sale of farms is 30 November 1999. Last payment date depends on final processing of applications.

d The level of interest rate subsidy under exceptional circumstances will be phased down as follows: up to 100 per cent 1998–99, 85 per cent 1999–2000, 70 per cent 2000–01, 50 per cent 2001–02. Business support available from this element after 2001–02 will be reviewed in 2001–02.

Source: Advice from DPIE.

While some elements of AAA could be delivered under legislative arrangements used in the delivery of RAS, current indications are that the level of Commonwealth funding delivered under such arrangements is likely to decline (Figure 2.1). The exceptional circumstances element of RAS is the major

discretionary element that could continue to be delivered under the NSW Rural Assistance Act. However, the level of exceptional circumstances funding delivered in any one year is highly variable. Due to the progressive phasing down of the interest subsidy component, expenditure under this component is also set to decline.

Table A.2: Elements of the Agriculture – Advancing Australia rural policy package, administering authority and Commonwealth funding commitment

<i>Element</i>	<i>Administering authority</i>	<i>Forward commitments at 30 June 1998 (\$m)</i>	<i>Expenditure 1997–98^a (\$m)</i>	<i>Budget 1998–99^b (\$m)</i>
Carry-over commitments from RAS	DPIE/States rural assistance authorities	\$115.6m from 1 July 1997 to 30 June 2000	NSW – \$30.8m ^c Aust. \$98.8m	NSW – \$11.34m ^c Aust \$41.72m
Farm Management Deposit Scheme	Financial institutions	Cost to income tax revenue \$117m over 1 July 1998 to 30 June 2001 ^f	\$14.7m	\$28.2m
Exceptional Circumstances Support — Interest rate subsidies	States rural assistance authorities	As approved	\$24.3m	na
Farm business and community programs	DPIE/ States rural assistance authorities		NSW – Nil Aust. – \$5.5m	NSW – \$1.1m ^c Aust.– \$18.2m ^d
Farm Business Improvement Program (Farmbis)	DPIE/ States rural assistance authorities	\$50m over 1 July 1998 to 30 June 2001	na	NSW – \$1.1m ^c Aust. – \$3.4m
Creditcare	Credit Union Services of Aust. Ltd (CUSCAL)	\$2.7m over 1 July 1997 to 30 June 2000		
Climate Research and Development	Land and Water Resources R&D Corporation	\$3.5m over 1 July 1997 to 30 June 2000		
Rural Communities Program	DPIE	\$39.6m 1 July 1997 to 30 June 2000		
Communications	DPIE	na ^e	na	na

Continued/...

Table A.2: (Continued)

Welfare programs				
Retirement Assistance for Farmers Scheme	Centrelink	\$77.6m over 1997–98 to 2005–06		
Farm Family Restart Scheme	Centrelink	\$39.51m over 1997–98 to 2001–02m	\$11.06m	
Exceptional Circumstances — Relief Payments	Centrelink	As approved	\$65.5m	\$27.5m
Farm Household Support Scheme Debt Write-off	DPIE	\$5.1m once only conversion in 1997–98	\$5.1m	na

na Not available.

a Estimated outcome.

b Budget.

c Estimates by States are indicative only due to continuing negotiations with all States. Estimates do not include the Natural Heritage Trust component included in the final Farmbis package.

d This estimate comprises the Commonwealth component of \$18.2m. There is also a State component of \$3.3m (see Commonwealth Budget Paper, pp. 61 – 62).

e Includes \$1.7m for Understanding Rural Australia Project.

f The scheme replaces the Income Equalisation Deposit (IED) Scheme. The estimates represent the budgeted cost of IEDs plus an estimate of the additional income forgone from the FMDS. The estimates refer to the estimated gross amount of tax forgone in any one year.

Sources: Portfolio Budget Statements 1998, 'Primary Industry and Energy Portfolio', Budget Related Paper No. 1.12, Canberra, and advice from DPIE.

APPENDIX B

KEY FEATURES OF DEBT MEDIATION PROCESS — *FARM DEBT MEDIATION ACT 1994*

Key features of the *Farm Debt Mediation Act 1997* include:

- No enforcement action until notice of availability of mediation is given:
8.(1) A creditor to whom money under a farm mortgage is owed by a farmer must not take enforcement action against the farmer in respect of the farm mortgage until at least 21 days have elapsed after the creditor has given a notice to the farmer under this section. ...
- A farmer may request mediation:
9.(1) A farmer to whom a notice has been given under section 8 may, within 21 days after the notice was given, notify the creditor in writing that the farmer requests mediation concerning the farm debt involved. ...
- Enforcement action postponed to allow for mediation:
10.(1) Once a farmer has given a creditor a notification in accordance with section 9 requesting mediation, the creditor must not take enforcement action in respect of the farm mortgage concerned unless a certificate is in force under section 11 in respect of the farm mortgage. ...
- Certificate that Act does not apply to farm mortgage:
11.(1) The [NSW Rural Assistance] Authority must on application of a creditor under a farm mortgage issue a certificate that this Act does not apply to the farm mortgage if the Authority is satisfied that: (a) satisfactory mediation in respect of the farm debt has taken place; or (b) the farmer has declined to mediate in respect of farm debt; or (c) 3 months have elapsed after a notice was given by the creditor under section 8 and the creditor has throughout that period attempted to mediate in good faith

The Act is not intended to affect the operation of any other Act or law dealing with matters such as the granting of relief in respect of harsh, oppressive, unconscionable or unjust contracts or on the grounds of hardship (see section 7 of Act).

APPENDIX C

SOURCES OF MEDIATION AND CONSUMER PROTECTION IN CREDIT MARKETS

Protection orders and the Farm Debt Mediation Act provide two sources of mediation and consumer credit protection directed at the rural community. Other sources of support are provided by the Banking Industry Ombudsman, the Credit (Rural Contracts) Act, other credit acts administered by the Department of Fair Trading and the Trade Practices Act. This appendix briefly reviews the main features of these instruments.

C.1 Banking Industry Ombudsman

The Banking Industry Ombudsman provides a process for resolving questions of fact in disputes between banks and their individual and non-corporate customers. The terms of reference specify that:

The Ombudsman shall have no power to make a recommendation or award in respect of a dispute to the extent that it relates to a practice or policy of a Bank which does not itself give rise to a breach of any obligation or duty owed by the Bank to the applicant. (ABIO 1998)

Apart from this limitation, the Ombudsman's terms of reference limit it to matters subject to possible awards against banks of up to \$150 000 accruing to individuals and non-corporate businesses. These limitations do not apply to matters subject to mediation under the Farm Debt Mediation Act.

C.2 Rural credit and other acts

The *Credit (Rural Contracts) Act 1987* is administered by the NSW Department of Fair Trading. In principle, this Act would enable farmers to apply to the Commercial Tribunal or a local court for variation of credit contracts in case of hardship or for relief from unjust contracts, except for contracts relating to the purchase of land. However, it has never been brought into force and no applications have been processed under its provisions. The Department of Fair Trading also administers a number of other Acts which might provide protection and relief to farmers. The relevant Acts include: the *Consumer Credit Administration Act 1995*, *Consumer Credit (NSW) Act 1995*, *Contracts Review Act 1980*, *Credit Act 1980*, *Credit (Administration) Act 1984*, *Credit (Finance*

Brokers) Act 1984, Credit (Home Finance Contracts) Act 1984 and Fair Trading Act 1987.

It would be appropriate to assess how these Acts overlap with the Rural Assistance Act and the Debt Mediation Act and the assistance they afford the rural sector.

C.3 Trade Practices Act

The ACCC administers the Trade Practices Act (TPA). This Act prohibits unconscionable conduct in the range of consumer dealings. The Act applies to business and commercial activities of corporations, and persons and partnerships (under certain circumstances). It provides that:

... a corporation must not, in trade or commerce, engage in conduct that is unconscionable within the meaning of the unwritten law in the Australian States and Territories — ie common law as it has evolved through decisions of the courts. (Trade Practices Tribunal 1993, p.2)

Unconscionable conduct has come to mean:

- a party to a transaction suffered from a *special disability*, or was placed in some special situation of disadvantage, in dealing with the other party;
- the disability was *sufficiently evident* that the stronger party knew, or ought to have known, about it; and
- the stronger party took *unfair advantage* of its superior position or bargaining power. (Trade Practices Tribunal 1993, p.2)

The TPA provides protection to farmers who are misled by financiers or feel they have a grievance associated with an imbalance of information between themselves and the financier. The Act applies to all credit providers and debtors and does not convey any special rights to farmers. It does not protect individuals against poor business decisions or the effects of market and seasonal fluctuations. In the normal course of business, if a farmer had a grievance under the TPA, he/she would need to pursue the grievance directly with the financier or the appropriate court.

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