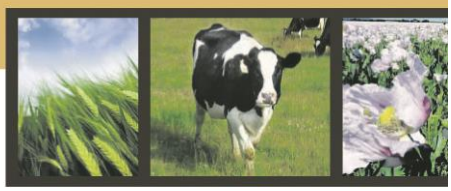


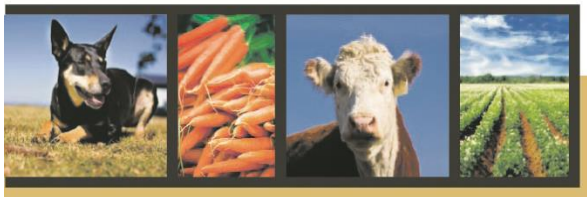
Tasmanian Farmers and Graziers Association

Submission to the:

Regulation of Australian Agriculture
Issues Paper

Productivity Commission

February, 2016



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OVERVIEW

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

Operationally, the TFGA is divided into separate councils that deal with each of the major commodity areas. As well, we have a number of standing committees that deal with cross-commodity issues such as climate change, biosecurity, freight, forestry, water and weeds. This structure ensures that we are constantly in contact with farmers and other related service providers across the state. As a result, we are well aware of the outlook, expectations and practical needs of our industry.

The TFGA acknowledges that regulation sets a minimum level of performance that is required to meet community standards and expectations. However, it is critically important that regulation is appropriately targeted and clearly communicated; that stakeholders are educated; and that any restrictions are minimised to ensure that our competitiveness is not limited and we avoid perverse outcomes.

Often, it is the cumulative impact of regulation that more generally concerns the industry. It is only when we have the accumulated burden of federal, state, local government and regional council associations that we begin to understand that with four or more layers of competing and often contradictory regulation it becomes near impossible to find an economical way through. When coupled with seemingly minor regulatory imposts, the competitive burden can become overwhelming. This malaise of regulation often leads to developments not proceeding on the basis that it is all too hard.

The Tasmanian government's report 'Measuring Red Tape'[1] released in January 2013 reported some extremely disturbing figures for the agriculture sector in Tasmania. The gross value of production for agriculture, fishing and forestry in Tasmania is $1.982 billion, of which the agriculture sector accounts for $1.150 billion. The cost of regulation for these three sectors of the industry is $321.4 million per annum. That figure is overwhelming as a standalone figure, but it represents 16.2 percent of the value of production in Tasmania.

So where agriculture, fisheries and forestry account for ten percent of Tasmania's Gross State Product, the three sectors carry more than twenty five percent of the total regulatory compliance cost in Tasmania. These figures are more than likely to be on the conservative side, and the real impost will be potentially significantly greater.

Notwithstanding that fact, the reality is that as a sector agriculture carries a far greater regulatory cost burden than any other industry within the Tasmanian economy, a situation that is no longer sustainable.

TFGA believes that governments at all levels should be seeking to reduce and eliminate excessive regulation and hence reduce compliance cost burdens on small businesses such as farmers.

There is a clear understanding in industry of the negative impacts of excessive regulation and the duplication and perverse outcomes that result. Governments need to commit to a systematic review of all regulation with a view to identifying and subsequently removing all regulation that is duplicated and or fails the 'common sense' approach.

Regulations that by their nature either produce perverse outcomes or have a greater propensity to produce such results need to be repealed or significantly modified.

[1] Measuring Red Tape: Understanding the compliance burden on Tasmanian Businesses (2013). For the Tasmanian Department of Economic Development, Tourism and the Arts. Stenning & Associates.

In particular, there is a clear need for better education and a corresponding realignment between the federal and state governments regarding reducing regulation. Regulatory costs continue to impose significant competitive burdens on farmers with no evidence of any increased return. We are continually told that farmers must operate in a global market – and we do. That means our prices are set by factors well beyond our control; and we have limited capacity to claw back more of the retail dollar to cover increasing on-farm costs.

We all recognise that regulations are a necessary part of everyday life. However, regulations need to be practical and evidence-based. Good public policy requires ownership by those that it impacts, failure to achieve that goal results in poor policy outcomes. There seems to be a mindset within some parts of government that they must set the highest regulatory standards anywhere in the world regardless of the science and the impact on farm businesses.

What is clear is that, unless we get a more sensible approach to regulation of the agriculture sector, then many of our farms will be driven out of the industry.

It is in the interests of government to consult early with industry to determine the industry perspective on the perceived problem or concern that needs to be addressed. While there are regular opportunities for consultation, often the problem has been identified and agreed upon without debate and discussion with the key stakeholders who will be impacted by the proposed measures. As part of the regulatory development process, it is critical that there is a clear understanding of the market failure or problem that the regulation is seeking to remedy. Industry must be part of the conversation early to ensure there is an open and comprehensive consideration of the issues.

Clearly, given the right operating environment, agriculture is a major part of the solution to financial woes at both state and national levels. However, this can only happen if governments understand the impacts their decisions have on farm businesses and ensure that regulations are not burdensome. If governments continues down the current track of unjustified over-regulation, then farmers simply can't continue to absorb the costs that result and remain competitive.

CURRENT GOVERNMENT ACTION

The TFGA commend the actions of the Tasmanian Government in undertaking the process to consider and cut unnecessary red tape from the agriculture sector. There have been three key Tasmanian based documents that have started and have begun to cut red tape, being:

i. Measuring Red Tape: Understanding the compliance burden on Tasmanian Businesses
ii. Compliance Burden Review – Agriculture Sector, December 2013. PricewaterhouseCoopers Australia for the Department of Economic Development, Tourism and the Arts; and
iii. Tasmanian Red Tape Audit Report, 2015. Office of the Coordinator General.

The third report shows what red tape issues have been reduced within the agriculture, forestry and fishing industries in the State. This is a very good start and the TFGA want all levels of government to work together to reduce regulation from all levels to assist our sector concentrate on what they do best and farm, not worry about additional and in some instances unnecessary paper work.

COMMENTS TO PRODUCTIVITY COMMISSION ISSUES PAPER

The TFGA appreciates the opportunity to make comment to the Productivity Commission's Regulation of Australian Agriculture issues paper.

The administrative and cost burdens to comply with and carry on business in the agricultural sector are significant.

The problem becomes compounded when unnecessary regulatory burdens are imposed on industry. This can arise in a number of ways, including through excessive regulatory coverage; overlap or

inconsistency; unwieldy approval and licensing processes; heavy-handed regulators; poorly targeted measures; overly complex or prescriptive measures; excessive reporting requirements; or creation of perverse incentives.

Below are specific examples that TFGA members have and are experiencing because of over regulation or problems arising from lack of communication and/or consultation.

Farm vehicle travel log-book requirements:

Some agriculture sector businesses indicated that they were required to maintain travel log books for any trips taken in a heavy vehicle (greater than 12.9 tonnes mass). This was considered to be an onerous requirement given the large number of short trips that are undertaken and the need to record each of these trips separately.

The purpose of maintaining log books for heavy vehicles is to improve road safety outcomes by monitoring and managing issues associated with driver fatigue. This is particularly relevant in the heavy vehicle freight industry. Businesses consulted advised that farm heavy vehicles do not generally travel long distances, and so issues of driver fatigue are less relevant. For these farm heavy vehicles, the businesses consulted advised that the majority of trips are of a short duration and generally involve travel of less than 50 kilometres from the agriculture business.

In Tasmania, the requirement to keep log books for heavy vehicles has recently moved to sit under the National Heavy Vehicle Regulations (NHVR). The NHVR provides an exemption from completing a work diary (or log book) to record work and rest times for heavy vehicles that travel within a 100 kilometre radius of their base.

This exemption has a direct benefit for agriculture businesses with heavy vehicles as it reduces the record-keeping requirement for these vehicles. The extent to which this benefit is realised will depend on agriculture businesses understanding the new requirements and their obligations under those requirements, particularly in relation to applying the exemption and demonstrating compliance with other requirements such as scheduled breaks (where applicable). Anecdotally, some businesses may be unnecessarily complying with the work diary (log book) requirements because they are unclear on what minimum requirements apply to their situation.

To assist agriculture sector businesses to realise the benefits of the NHVR exemption (where applicable), guidance material could be prepared to communicate the specific changes to agriculture sector businesses and clarify how the new requirements can be met in practice.

Council Compliance Costs for Building a Calf Rearing Shed:

A Northern Midlands farmer proposed to build a 500m^2 shed for rearing dairy calf heifers. A simple structure clad only on three sides but fully engineered and professionally constructed at cost of $40,000.

The farmer was told by Local Government Council that the shed would not require planning permission but would require building/plumbing permits and assessment at a cost of $2003 plus a refundable $500 deposit.

The shed once constructed actually was 510m2 (not believing that it would make any difference in the overall scheme of things the farmer had approved of this). The farmer was then informed by the Council that this lifted his shed into a new category for permits (by 10m2) and that the costs of compliance would be $685 extra.

An appeal for discretion was denied and the farmer paid the additional costs.

A person constructing a new residential home in the same Council that is over 200m2 and costing $300,000 would be charged $2987 in building and plumbing compliance costs – and that includes the refundable deposit.

Local Government Council Treatment of Effluent from Stock Crossing Public Roads:

A North West Tasmania farmer was ordered by his Local Government Council to clean cow pats from the public road straight after they crossed each day for milking citing the reason as they were creating a hazard and contravening the Road Act. He was told that refusal to do so would see him prosecuted.

As this was a relatively busy but obscured stretch of road the farmer had in the past used warning signs that he had purchased in attempt to slow the traffic down. As cars had continually ignored his signs he requested that a speed restriction be erected in that zone so that they could hose the road down safely. Council refused the request. This issue was never resolved.

This type of scenario (effluent on the road) is played out commonly across Tasmanian Local Government Council divisions and has differing reactions from different Council bodies – from the officious enforcement above to a more practical and understanding approach of enforcement that requires wash down where it is safe and reasonable to do so. In a neighbouring Council to the one above the Council erected permanent warning signs to assist the farmer.

Utility Issues:

- Every cropping season TFGA receives numerous complaints from farmers who have been ploughing paddocks and unwittingly dissected Telstra cables. Often they are unaware of the issue until they receive an invoice from Telstra for the repairs as the line in question does not even service their property. Now Telstra is semi-privatised there is this legacy of unfettered easement with no control or recourse.
- Aurora issued notice to farmers who have raised platforms to access their power meters that the meter readers would not be reading these meters until the platform had been certified by an engineer as being compliant with current Australian standard. The cost of getting the certification was in cases very costly.
- Some long established connections on properties that farmers are unaware they bear the responsibility for maintenance of poles and wires as they have been deemed private at some stage. Some aware of responsibility for private poles but NOT the wires - this includes safety inspections - as this has never been established and the changes of the government energy business structures over the years means that there is no real recourse in some cases.

Workplace Health and Safety:

The adoption by Tasmania of the National Workplace Health and Safety code has ensured that all farm businesses are now under this regime – whether they are direct employers or not. The new system sought to make WHS simpler and more streamlined however for many employers it has added more grey to the plethora of regulation that controls them daily.

The new regime increased the burden of compliance upon many Tasmanian farm businesses but without giving them the tools to actually achieve improved farm safety. It adds yet another layer of expense as farmer's direct resources toward trying to address compliance rather than improving safety.

It is unfortunate that alongside of this increased demand for WHS compliance is a ballooning worker's compensation liability. TFGA has anecdotal evidence of farmers being quoted workers compensation premiums in excess of 22% of payroll for 2015. This is leading some producers to review their capacity to employ workers. If we are going to invest in improving farm safety then we have to ensure that the workers compensation insurance companies meet the industry through improved premiums.

Some examples of Workplace Health and Safety:

- Member had to remodel 100 year old shearing shed and remove stand as it was deemed stands too close. Workplace Standards Tasmania could not give an answer on what distance was required between stands. There is no standard in Tasmania for shearing sheds so was given Victorian standard (Victoria not a harmonised OHS state). The cost to the member in question has amounted to thousands of dollars.
- New harmonised laws adopted that place much greater onus upon small businesses. This is particularly so for farmers as they have a vast area under their control, most live in their "workplace" and deal with risky undertakings daily. Despite this no funding was allocated to work with farmers to help educate them on how to be compliant. There is also no recognition or acknowledgement of what farmers are already having to do to meet the numerous private sector QA's that they have to comply with already.

EPBC Act:

From a Commonwealth perspective, the Environment Protection and Biodiversity Conservation Act (EPBC) is the dominant legislative instrument used to regulate environmental matters. In our view, there are a number of significant failings with this legislation.

The current process of listing matters of significance allows the regulatory reach of this legislation to continue to grow with little likelihood of there being any reductions without a major overhaul of the Act. Listings of significant matters need to be contemporary and relevant, failure to do so exacerbates a culture of distrust and noncompliance.

There is an implicit assumption in the EPBC that threatened species and/or ecological communities can and should be protected, no matter the cost or the consequences. Recent scientific debate suggests that this assumption requires much more rigorous testing; and it is important to recognise that such aspirations are not always desirable or attainable.

As a community, we need to reassess our ability to protect and nurture all threatened and endangered species. In doing so, it will be important to prioritise those that have a very real likelihood of success and accept that some will not survive. Humans will continue to undertake activities that have adverse environmental impacts - and of course they should seek to avoid and mitigate these wherever possible. However, pragmatically, it is also important to accept that some level of residual adverse environmental impact is unavoidable and a part and parcel of our existence as a species. These adverse impacts cannot realistically be compensated for in any meaningful way; and listings need to be reviewed regularly to ensure that they bear up under contemporary scrutiny and community expectations.

Communication between all levels of Government:

There is a clear understanding in industry of the negative impacts of excessive regulation and the duplication and perverse outcomes that result. Governments need to commit to a systematic review of all regulation with a view to identifying and subsequently removing all regulation that is duplicated and or fails the ‘common sense’ approach. Regulations that by their nature either produce perverse outcomes or have a greater propensity to produce such results need to be repealed or significantly modified.

There is a clear need for better education and a corresponding realignment between the federal, state and local governments, as there is no coordination of expectations between levels of government; nor is there any recognition of cumulative impact.

Industrial Relations:

We have a complicated structure and mandates around aspects of the employment relationship such as allowances, penalty rates and minimum engagement for casuals all combine to limit the ability of the sector to employ at full capacity.

The current industrial relations regime is inflexible and places compliance demands on small business that they do not have the skills, knowledge or time to address. The answer can be that they elect not to employ where, given an easier and more flexible system, they would otherwise have chosen to do so.

Examples of this complicated award structure:

- The one opportunity that was sadly missed when the federal based modern award system was the simplification of awards. An award system that used simple language, was clear, concise and able to be understood by the average employer (i.e. those that did not have the resources to ready access to human resource specialists).
- Quite to the contrary employers have, in many cases, a much more complicated award to deal with. The Pastoral award was an attempt to roll several different awards into one but instead produced a complicated award that consists of sub-awards and uses language that was the basis of award development decades ago.
- Employers are forced to spend time trying to interpret and award or pay for professional advice in order to pay employees. In the case of casual engagement this can equate to wasting a great deal of valuable resources every year.
- The average employer should, in this day of 'instant information' be able to ascertain the correct wage rate for an employee with little fuss or expense to their business

Penalty Rates:

- While admittedly the two agricultural based awards, the Pastoral Award and the Horticultural Award, contain some of the more generous provisions for what constitutes "normal hours of work" they are still restrictive for an industry where for the most part work ebbs and flows with the seasons.
- At the height of harvesting many farmers and agricultural contractors are faced with paying penalty provisions that add a substantial layer of production cost generally not borne by those countries that Tasmanian agriculture seeks to compete with in global markets.
- The penalty system also adds to the casualised nature of employment within the industry as employers are not able to 'smooth' a full time employees hours between the seasonal highs and lows of labour demand. Instead they are forced to maintain an employee's casual status so that they can meet the fluctuating demand without crippling penalty.

Flexible agreements and the 'Better of Overall' Test (BOOT):

- The Fairwork legislation allows for individual flexible agreements for a limited number of aspects of the employment relationship to be negotiated between and employer and an employee. However this semblance of flexibility is greatly curtailed by the vague notion of BOOT; i.e. an employee must be better off overall under the flexible agreement than they were under the original award terms.
- There needs to be greater ability of employers and employees to negotiate an arrangement that suits both parties. BOOT is a highly subjective and unsatisfactory test that is counterproductive and does not deliver on flexibility.

Casual employees:

- Employment in the agricultural industry is largely casualised and it is difficult to see how this will change in the near future. This is largely because it is difficult for primary producers across most sectors to be able to commit to employing someone long term when their forecast income is subject to so many variables that are beyond their control.
- The amount of compliance for a short term casual employee is the same as that required for permanent employees, this is an unreasonable expectation particularly at times of high turnover such as harvest season.
- Currently there is a minimum engagement of three hours for casual workers under the Pastoral Award. This proves extremely challenging for the dairy industry as all but the larger enterprises do not need an employee to cover a milking that may only last 1 to 2 hours. This prevents many from engaging someone on a casual basis to cover milking's. Often the person that would otherwise be engaged in this type of role may be a mother or young person who is only seeking an hour or two of work.
- The TFGA believes that the minimum engagement is an unnecessary mandate as the market has the ability to dictate what an acceptable period of engagement for an employee is.

NECESSARY ACTIONS GOING FORWARD

While governments are already taking steps to review and scrap unnecessary regulation, this process needs to be fast-tracked. Old and outdated regulations need to be repealed; duplicative and unnecessary regulations need to be rationalised; and, where appropriate, regulations need to be streamlined across all jurisdictions. Importantly, any new regulation must be preceded by a comprehensive impact assessment that incorporates a detailed and costed business case.

Government can assist by:

- starting from the position that regulation should not seek to do what the market can do by itself;
- collecting sound background data to demonstrate the impact of regulation on the cost of doing business and in order to evaluate whether necessary or otherwise;
- ensuring industry is consulted in a meaningful way in the development of any new regulation; and
- ensuring that all levels of government participate in the process of removing unnecessary duplication and imposts.

The ongoing reliance on regulatory control as the preferred methodology in obtaining compliance lacks the fundamental understanding that often more productive outcomes can be obtained by using other non-regulatory incentives. These alternatives can take many forms and are better mechanisms for genuinely engaging stakeholders. This type of engagement ensures that real environmental outcomes are achieved and rates of compliance are much higher.

In summary, the regulatory framework should be seen as a minimalistic structure that underpins an agenda of incentivisation that is achieved via programs that engage farmers and others as shareholders in achieving a targeted environmental outcome.

The primary contact for this submission is Peter Skillern, Chief Executive Officer of Tasmanian Farmers and Graziers Association.

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