Queensland
Government

Department of
Agriculture and Fisheries

Reference: **CTS 02495/16**

11 FEB 2016

Mr Paul Lindwall and Mr Ken Baxter
c/- Regulation of Australian Agriculture
Productivity Commission
Locked Bag 2
Collins Street East Post Office
MELBOURNE VIC 8003

Dear Commissioners

Thank you for the opportunity to make a submission on the Productivity Commission's Issues Paper on the regulation of Australian agriculture. The attached submission has been coordinated by the Department of Agriculture and Fisheries and has been developed with input from other relevant Queensland Government departments.

The Department of Agriculture and Fisheries would be pleased to provide further input during the course of the Commission's inquiry.

If your Office requires any further information, please contact Dr Zena Dinesen, Principal Policy Officer

Yours sincerely

Dr Elizabeth Woods
Director-General
Department of Agriculture and Fisheries

Att

Floor 8
Primary Industries Building
80 Ann Street Brisbane
GPO Box 46 Brisbane
Queensland 4001 Australia
Business Centre 13 25 23
Website www.daf.qld.gov.au
ABN 66 934 348 189

PRODUCTIVITY COMMISSION INQUIRY INTO REGULATION OF AGRICULTURE

SUBMISSION ON ISSUES PAPER, FEBRUARY 2016

Introduction

The Queensland Government welcomes the national Productivity Commission inquiry and is supportive of measures to reduce unnecessary regulation of farm businesses and associated supply chains.

This submission has been coordinated by the Department of Agriculture and Fisheries (DAF), and has been developed with input from other relevant Queensland Government departments.

The scope of the issues covered in the Issues Paper released by the Commission in December 2015 is very broad, and this submission does not respond to all the questions raised. Instead, it summarises the Queensland context and measures the Queensland Government has taken to address unnecessary regulatory burden affecting Queensland farmers. It also suggests some nationally relevant areas where there is unnecessary red tape or inconsistencies in regulatory requirements that the Commission may like to consider in its inquiry.

Queensland context and approach to regulation of agriculture

Some of the most significant areas of regulatory burden reported by the agricultural industry in Queensland are common to all businesses. These include burdens relating to taxation legislation, workplace health and safety legislation and general business regulation such as employment legislation.

The Queensland Government appreciates that there can be a cumulative regulatory compliance burden for businesses, even though the cost of individual regulatory requirements may not be onerous. The cumulative burden can be particularly onerous for small businesses trying to understand and comply with regulatory requirements across three levels of government.

DAF provided input to the Australian Government on the Agricultural Competitiveness White Paper. Actions arising are now being overseen by the Agriculture Ministers' Forum (AGMIN) and the key to successful progress will be to ensure agreed programs and funding are rolled out.

Workforce issues

The regulatory burden associated with maintaining and developing a workforce is particularly challenging for many agri-businesses. In recent years, initially through the *Horticulture Workforce Development Plan* and more recently through the *Rural Skills and Jobs Alliance*, DAF has provided

advisory personnel to work directly with agri-businesses to help them comply with the requirements of the employment and migration systems.

Reducing the regulatory burden on small businesses

The Red Tape Reduction Advisory Council has been established to provide the Queensland Government with advice on red, green and blue tape areas of most concern to small business, and assist the State to provide a business environment conducive to strong, profitable and globally competitive businesses. Specifically, the Council has the task of analysing regulatory issues which inhibit small business growth, impose a significant regulatory burden on small business, or create barriers to business entry in Queensland. It is also tasked with identifying new initiatives or reform projects which could assist in streamlining government processes impacting on small business growth.

The Council is undertaking research to assist them in providing advice to the Government on regulatory issues. One of three areas of research for 2016 is a review relating to the fruit growing industry. This research will include mapping of the regulatory environment and the compliance obligations of businesses in the sector, case-studies of two businesses in the sector, and consultation with industry stakeholders to identify pain points for businesses. The Council will submit its findings in a report to be released in August/September 2016.

Business-imposed regulation

The perception of regulatory burden by the agriculture industry may also be heavily influenced by the high level of business-to-business regulation, that is, restrictions imposed on producers by receivers (such as supermarkets' quality assurance requirements imposed on their suppliers). In 2014 Deloitte Australia completed a report on businesses' own internal red tape entitled *Getting out of your own way – Unleashing productivity* which may be of interest to the Commission. Government may be able to assist in reducing the net burden (for example, by encouraging removal of duplication between government and commercial food safety audits) but ultimately these business-to-business requirements are commercial matters over which government has limited control.

Regulation that underpins market position

Some regulation of agriculture is beneficial to the industry because it facilitates market access and/or maintains the industry's reputation. Most of the Queensland legislation specific to agriculture concerns biosecurity (including livestock traceability), agricultural and veterinary chemicals, animal welfare or food safety. This legislation is very important for reputation and market access, both interstate and/or overseas. As such, it provides many benefits to the agriculture industry.

A major review and consolidation of Queensland's biosecurity legislation resulted in the new *Biosecurity Act 2014* which commences on 1 July 2016. This will replace six current Acts and parts of three other Acts. It will significantly streamline the regulation of biosecurity risks. Critically, this generally risk-based and outcome-focused legislation replaces much more prescriptive regulation and this gives the industry more flexibility about how it meets its legislative obligations with potential for reduced costs.

Similarly, food safety regulation for the primary production and processing sector has been reformed in recent years to be less prescriptive and more risk-based and outcome-focused. This

more flexible approach is reflected in the requirements of the food safety schemes which cover meat, dairy, eggs, seafood and horticulture (seed sprouts).

The risk-based approach under the *Biosecurity Act 2014* is consistent with DAF's general approach to regulation of agriculture – to provide regulatory measures which underpin the industry's market position, while minimising their compliance costs.

Land management

Queensland's land management legislation promotes agricultural use and processes continue to strengthen landholders' security and flexibility. For example, pastoral leases under the *Land Act 1994* (Land Act) may be used for grazing and/or agricultural purposes. Agricultural purposes cover diverse 'as-of-right' uses including aquaculture, feed lots, timber plantations, orchards and crops. Additional purposes such as low key tourism may be approved if they are complementary to, and do not interfere with, the purpose for which the lease was originally issued, or they relate to the production of renewable energy (subject to native title considerations).

Amendments to the Land Act which came into force on 1 July 2014 have further increased security of tenure and investment certainty for primary production leases, provided a new pathway to freeholding and greatly reduced the regulatory burden on lessees. Work on the modernisation of Queensland's State land management framework continues and further reform opportunities could be explored for primary production leases - for example, measures to provide further prospects for the diversification of primary production leases, and general purpose leasing arrangements.

Queensland's Agricultural Land Audit has identified and mapped quality agricultural land in Queensland. Agriculture is promoted as a desirable land use in these areas and the State's agricultural interests are provided for in State planning instruments, including the *Regional Planning Interests Act 2014*, which serve to guide planning and development decisions.

Vehicles and transport

Vehicles used in the agriculture industry are subject to regulation in relation to the conditions upon which they are allowed access to roads, and how they can be operated whilst on roads. Such regulation focuses on road safety and the protection of road infrastructure. The size and mass of vehicles will determine whether they are allowed access under general conditions, notice conditions (which apply to particular types of vehicles which fit within certain parameters) or permits (issued for individual vehicles with conditions based on the individual vehicle). Applications must be made for permits. The Department of Transport and Main Roads (TMR) is actively working with Queensland's agriculture industry to increase efficiency by reducing the need for permits. Also, TMR is currently undertaking a trial with the agricultural sector to evaluate reduced escorting arrangements and reduced requirements for agricultural vehicles to be transported on low-loader trailers. These arrangements are provided for in a notice, issued by the National Heavy Vehicle Regulator after a request by TMR.

Environmental legislation

Much of the other Queensland legislation that most directly impacts on agriculture is broadly necessary to meet national and international environmental obligations. In particular, some agricultural activities are regulated in Queensland to protect the Great Barrier Reef. Regulation remains essential to implement the Reef 2050 Long Term Sustainability Plan which informed the UNESCO World Heritage Committee's decision not to list the Great Barrier Reef as being 'in danger'. The Australian and Queensland Governments are responsible for reporting back to UNESCO in December 2016. Queensland agencies have worked closely with the agricultural sector and the Australian Government to ensure the policies designed to improve water quality and the uptake of agricultural best management practices are underpinned by scientific, peer-reviewed monitoring and modelling information.

Comments on specific areas of regulation

Agricultural and Veterinary (Agvet) chemicals

The Commission's Issues Paper indicated that responses to the Agricultural Competitiveness White Paper raised some outstanding concerns about regulatory burdens regarding inconsistencies between States and Territories in regulation after sale (e.g. for off-label uses). However, there may be little benefit in the inquiry focusing on Agvet chemical regulation. The States, Territories and the Commonwealth are currently advancing the Council of Australian Governments agreed reforms for consistent regulation of licensing and competency requirements for Agvet chemical users and controls of use, through an Intergovernmental Agreement for a single national regulatory framework for Agvet chemicals. DAF supports continuation of this approach and is concerned that the process has slowed in recent times.

Animal welfare

National animal welfare standards and guidelines are developed under a national process and adopted under legislation by individual State jurisdictions. Although this process is slow, the outcomes enjoy widespread support which is critical to achieving high levels of voluntary compliance. DAF supports continuation of this approach.

Water planning

Queensland is delivering on its commitments to the National Water Initiative predominantly through the preparation and implementation of water resource plans. In particular, Queensland has made significant progress in delivering on the key objectives and outcomes of this national agenda, including the establishment of open markets that enable the most productive and efficient use of water.

Changes introduced by the *Water Reform and Other Legislation Amendment Act 2014*, while yet to commence, are intended to reduce red tape and regulatory burden on stakeholders by streamlining and simplifying the way water is allocated and managed, whilst ensuring an appropriate balance of economic, social and environmental outcomes. The changes to the water planning framework address stakeholder concerns of lengthy timeframes to deliver water planning activities.

Queensland, through water planning and reporting processes, seeks to provide high quality information regarding the availability, reliability and transferability of water entitlements. Establishing a water trading market through the conversion of existing water entitlements to water

allocations under a water planning process provides for growth and development, without increasing the total entitlement volume for a water resource.

Reef water quality

The Australian and Queensland Governments recognise the significance of the Great Barrier Reef. The Reef Water Quality Protection Plan 2013 includes long term water quality goals, and targets for dissolved inorganic nitrogen loads, sediment and particulate nutrients and pesticide loads by 2018. Since this plan was prepared, further scientific studies have recommended revised targets.

As a result, the Queensland Government has committed to more ambitious targets to reduce "nitrogen run-off by up to 80 per cent and total suspended sediment run-off by up to 50 per cent in key catchments such as the Wet Tropics and the Burdekin by 2025". The Great Barrier Reef Water Science Taskforce was established to advise the Government on how to achieve these goals. The Great Barrier Reef Water Science Taskforce's Interim Report (December 2015) recommended that a mix of tools is needed to meet reef water quality targets, including incentives and market approaches, regulation, and extension. The Office of the Queensland Chief Scientist and the Department of Environment and Heritage Protection have noted the Great Barrier Reef Water Science Taskforce's recommendation: "Tailored regulation will be needed to reduce all sources of water pollution and should apply to agricultural, urban and industrial activities within Reef catchments. Future development should be regulated to ensure no net increase in water pollution. Any regulatory regime needs to be simple, easily measured and developed consultatively".

Further, the Reef 2050 Long Term Sustainability Plan identifies the need for regulation in some circumstances to effect change stating that "through tools such as Acts and regulations, zoning plans, environmental impact assessments, compliance actions and investment partnerships, the Australian and Queensland governments, local governments, Traditional Owners, industry, research bodies and community organisations have worked to protect the Reef". In addition, and importantly, "for some, regulation is the key, for others incentive-based programs, or industry-led delivery of best practice standards, education or market mechanisms are most effective."

Effective, targeted extension is also crucial. DAF has worked with agricultural industries and regional Natural Resource Management bodies in the Great Barrier Reef catchments to establish industry-specific best management practices to apply on-farm that are environmentally and economically viable. The industry input and ownership of the BMP programs are intended to increase the rate of voluntary adoption, minimising the requirement for regulatory intervention.

Meat export certification

Efficient and cost-effective export certification processes are critical for the export industry. In December 2015, the Australian Government approved recommendations to improve existing legislation governing agriculture export. The improvements will be delivered through the Agricultural Competitiveness White Paper.

Efforts are continuing to improve harmonisation between domestic and export meat safety inspection and certification arrangements.

Intensive livestock production

Queensland's environmental legislation has undergone significant revisions, including the *Greentape Reduction* project, which benefitted intensive agriculture industry development. The reforms included a reduction in the number of lower risk activities that require environmental approvals, and the adoption of a fees system based on emissions profiling. The reforms also resulted in responsibility for development assessment and enforcement of environmental requirements for poultry farming being delegated to DAF, which already had delegated responsibility for other intensive animal industries such as piggeries and cattle feedlots. This change has delivered efficiencies in terms of consistency in planning policy and approvals processes, and has provided greater certainty for developers.

Vegetation management

The clearing of native vegetation in Queensland is regulated by the *Vegetation Management Act 1999* (the VM Act), the *Sustainable Planning Act 2009* and associated policies and codes, some of which are self-assessable. Self-assessable codes are available for managing encroachment, fodder, managing different categories of regrowth, among other actions. These codes are currently being reviewed to ensure they are meeting the objectives of the VM Act including reducing greenhouse gas emissions. Landholders also have the ability to apply for a Property Map of Assessable Vegetation (PMAV). Once the PMAV is certified, it replaces the regulated vegetation management map for determining the location and extent of the areas of regulated vegetation, providing certainty to landholders.

Other environmental legislation

Land clearing for agriculture is also regulated for more immediate environmental protection and biodiversity under the *Nature Conservation Act 1992* (Qld) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act). Agriculture industry members sometimes raise concerns about the excessive regulatory burden imposed by the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act), when there are already environmental impact assessment and approvals required under State legislation. However, there are relatively few Queensland agricultural projects that require approval under the EPBC Act.

Gene technology regulation

A 2011 review of the *Gene Technology Act 2000* (Cth) found that the Act is working well, although there are aspects of its implementation at State and Territory level that need attention. Concern amongst some stakeholders about the lack of consistency of gene technology regulation in Australia was identified, stemming from delays in some jurisdictions in adopting changes to the Commonwealth legislation as well as the declaration of genetically modified (GM)-free areas and moratoria on some GM crops.

A 2013 review of the *Gene Technology Act 2001* (Qld) concluded that there are potential efficiencies to be gained from automatically applying the Commonwealth gene technology laws as laws of Queensland (i.e. lock-step). A legislative proposal is currently being developed to improve clarity, consistency and certainty for Queensland state government agencies, higher education institutions and sole traders undertaking gene technology activities.

Queensland has not had a moratorium on GM crops. Most of the cotton grown in Queensland is from GM lines.

Sugar marketing

The Katter's Australian Party's (KAP) *Sugar Industry (Real Choice in Marketing) Amendment Bill 2015* was passed by the Queensland Legislative Assembly on 2 December 2015. It was not supported by the Queensland Government due to likely negative impacts, which were identified in a regulatory impact assessment undertaken by the Queensland Productivity Commission. As the amendments to the *Sugar Industry Act 1999* which commenced on 17 December 2015 authorise potential anticompetitive behaviour (in the form of enabling growers to force sugar mills to enter contracts with a sugar marketer of the grower's choice), Queensland's Treasurer wrote to the Treasurer of Australia on 17 December 2015 asking that the matter be referred to the National Competition Council (NCC) for assessment as to whether the anticompetitive provisions would deliver a public benefit.

Food labelling

In February 2015, the Commonwealth announced their commitment to reform Australia's country of origin labelling framework for food. The main component of the Commonwealth's proposed reforms is to regulate country of origin labelling for food through a mandatory information standard under the Australian Consumer Law (ACL). A Consultation Regulation Impact Statement (RIS) has been released and the results of consultation will inform the Decision RIS. It is anticipated that the Commonwealth will bring the final proposal to the Legislative and Governance Forum on Consumer Affairs (CAF) for decision, consistent with the Inter-governmental Agreement on the ACL. The current package of reforms would require the Australia and New Zealand Ministerial Forum on Food Regulation to approve the removal of the existing Standard 1.2.11 – Country of Origin Labelling from the Australia New Zealand Food Standards Code.

Additionally, the Commonwealth Treasury is currently leading a process to identify and assess options for enhancing consumer confidence and certainty about free-range egg labelling. This includes the preparation of a draft information standard under the ACL. Based on the results of consultation, it is anticipated that a Decision RIS will be released including the preferred policy options. A decision from CAF may also be sought on the final proposal for free-range egg labelling.

DAF encourages the Commission to consult with the Queensland Consumers' Association about consumer-related food labelling issues generally.

Areas that the Commission may wish to consider

Visas for agricultural workers

The availability of a suitable workforce is critical to the agriculture industry, in particular the horticulture sector. Regulatory changes have made it more difficult for agriculture in Queensland, to attract the necessary workforce. There are reports of fruit being left to rot for lack of harvesters. DAF suggests there should be greater flexibility in visa provisions which impact heavily on the horticulture sector's workforce – including 457 (skilled workers), 416 (Pacific seasonal workers) and 417 (working holiday) visas.

For example, overseas "backpackers" are really important as seasonal picking and packing labour in the horticulture sector, but those on a 417 visa are generally limited to a maximum length of six months' employment of their initial 12 month visa with a single employer. Extensions of time working with a single employer are currently available, but are restricted to agricultural locations

north of the Tropic of Capricorn. As the majority of Queensland's horticulture production areas lie to the south of this, it would be beneficial to allow priority agricultural locations that are below the Tropic of Capricorn to have the same extension of employment options.

The Seasonal Pacific Islander Program (416 visa) is very complex to use and there is a potential to reduce red tape. Employers must be approved by the Australian Government before they can recruit seasonal workers, and must then enter into agreements with the Australian Government and a sponsorship arrangement with the Department of Immigration and Border Protection. The Temporary Work (Skilled) visa (subclass 457) allows skilled workers to come to Australia and work for an approved business for up to four years; a business can sponsor someone if they cannot find an Australian citizen or permanent resident to do the skilled work. Eligible skilled occupations are currently defined by the Australian and New Zealand Standard Classification of Occupations (ANZSCO) coding system used by the Australian Bureau of Statistics, but this does not contain suitable occupation listings for the agricultural sector.

While taxation law is beyond the scope of the inquiry, DAF notes that new tax arrangements for backpackers (effective 1 July 2016) mean they will all be treated as non-residents and will pay 32.5c on every dollar earned (with no rebate available). This will bring the minimum net hourly casual rate down to $14.59 and may affect backpackers' willingness to work in the agriculture sector and their capacity to meet living costs. Similarly, the requirement for backpackers to pay superannuation is considered counter-productive, even if this is eventually refundable (less management charges) after they leave Australia.

Foreign investment approvals

Foreign investment has played an important role in funding the development of many industries in Australia, including agriculture. DAF is generally supportive of foreign interest in the agricultural sector due to its ability to provide much needed investment to fund improvements, efficiencies and innovations to ensure the industry is economically viable and sustainable. An example of this can be seen in the Queensland sugar industry where, following deregulation, significant investment flowed in from foreign companies at a time when domestic investment was not forthcoming.

It is recognised that there has been recent community concern about the level of foreign investment into Australian agriculture and whether the legislative and/or policy framework is robust enough to ensure Australia's national interest is adequately considered. Consequently, a number of reforms were introduced by the Australian Government including increased scrutiny around foreign investment in agriculture (i.e. the screening threshold for agricultural land was lowered from $252 million to $15 million) and the introduction of an agricultural land register which requires foreign owners to notify the Australian Taxation Office.

While DAF is supportive of measures to strengthen the foreign investment framework, the Productivity Commission Inquiry may want to assess the impacts of these reforms on foreign investment, and any subsequent flow-on effects to productivity.

Inconsistency across jurisdictions – impacts on larger businesses and foreign investment

Consistency across jurisdictions is of growing importance for larger businesses (such as corporates) and potential investors seeking to diversify their portfolio across multiple states. Inconsistencies can

multiply the compliance burden, for example in relation to land use planning, development approval processes and branding requirements.

Restrictions on interstate trade

There are genuine reasons for regulating interstate trade in certain commodities which could spread pests and diseases to currently unaffected areas of Australia. Interstate certification agreements are increasingly used to facilitate movement in these circumstances. However, there are some circumstances where Queensland believes restrictions on entry, particularly involving inspections at State borders, are unnecessarily onerous.

Heavy Vehicle National Law

Queensland is the host jurisdiction for the *Heavy Vehicle National Law Act 2102* (HVNL). Adoption of the HVNL by other northern Australian jurisdictions would see harmonisation across State borders that would help reduce costs for agricultural supply chains, including for cattle.

Native title

Processes under the *Native Title Act 1993* (Cth) (the NTA) may benefit from review to ensure they are proportional to the project, its impact and the support for the project from the Court-determined native title holders.

Where native title has not been extinguished all future development will need to comply with the NTA. The NTA sets out a framework for future acts (development) to take place validly. Some of these process requirements are simple, while others are not and can be time consuming and costly. Having a determination of native title assists, as it identifies the people and the rights, but the processes to be followed under the NTA for future development are almost identical whether there is a determination, a claim or no claim.

Where the process for undertaking future development is not a simple process it will likely require a voluntary Indigenous Land Use Agreement (ILUA). Furthermore, even where there is a determination, an ILUA is often required. Whilst simpler than where there is no determination, it is a burden on the native title holders that they cannot simply negotiate a project like any other party, but have to sign an ILUA for their own native title.